

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

B E T W E E N:

**ROYAL BANK OF CANADA**

Applicant

and

**PEACE BRIDGE DUTY FREE INC.**

Respondent

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

**AFFIDAVIT OF RON RIENAS**  
(Sworn 26 November 2022)

**I, RON RIENAS**, of the City of Port Colborne, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the General Manager of the Buffalo and Fort Erie Public Bridge Authority (the “**Authority**”) and, as such, have personal knowledge of the matters herein deposed save and except where I rely on information and belief, in which cases I identify the source of that information and verily believe it to be true.
2. I am swearing this Affidavit in response to the Affidavit of Jim Pearce affirmed 13 November 2022 (the “**Pearce 13 Nov 22 Affidavit**”). I wish to note that the Authority does not believe that PBDF’s purported Cross-Motion is properly brought in this Application and I do not want the fact that I am addressing statements or arguments made by Mr. Pearce in his Affidavit taken as the Authority agreeing that PBDF’s purported Cross-Motion is properly brought in this Application. I am assuming that the Pearce 13 Nov 22 Affidavit is also delivered in response to the Authority’s Motion returnable on 9 December 2022

**I. Summary**

3. There is no dispute that the minimum rent payable by PBDF under the Lease is \$333,333 per month. Mr. Pearce confirms that in paragraph 40 of his Affidavit that the Lease provides for minimum monthly rent of \$333,333 and PBDF told the Federal government that its rent was \$333,333.
4. There is no dispute that: (a) PBDF has not paid the minimum base rent of \$333,333 per month on the 1<sup>st</sup> day of the month since 14 December 2021 and has instead paid only 20% of its reported gross sales on random dates each month; or (b) the Authority: (i) never agreed in writing or otherwise to amend the Lease to provide for percentage only rent; and (ii) has consistently advised PBDF that the payment of percentage only rent is not acceptable to the Authority.
5. As is evident from the Pearce 13 Nov 22 Affidavit, PBDF wants the Authority to agree: (a) to give PBDF a 75% rent abatement and that PBDF does not have to pay anything to reduce the remaining rent owing until sometime in the future; and (b) that PBDF can pay percentage rent only for the foreseeable future. The Authority will not agree to give PBDF what it is demanding.
6. The Authority has provided PBDF with what it believes is a very reasonable offer in terms of a rent abatement—50% for the period from 1 April 2020 to 1 November 2021—and for the repayment the remaining rent owing by PBDF.
7. PBDF is using the stays imposed by the Appointment Order that prevent the Authority from exercising its remedies under the Lease as leverage, while not complying with the requirement of the Appointment Order that it pay rent in accordance with the Lease.

**II. Letter Attached as Exhibit A to the Pearce 13 Nov 22 Affidavit**

8. Attached as Exhibit A to the Pearce 13 Nov 22 Affidavit is a letter from John C. Wolf of Blaney McMurtry LLP ("**Blaney**") dated 14 January 2022. As is evident from the e-mail communications attached to that letter, Mr. Wolf had agreed that PBDF would not provide that letter to the Court. That is why there is no formal response from the Authority to the various assertions made by Mr. Wolf in that letter.
9. As noted in the e-mail exchange between Gowling WLG Canada LLP ("**Gowling**") and Blaney that is included with Exhibit A to the Pearce 13 Nov 22 Affidavit, the Authority contested a number of the

assertions made by Mr. Wolf in his letter of 14 January 2022, but did not formally respond based on Mr. Wolf's assertion that his letter would not be placed before the Court.

10. In his letter of 14 January 2022, Mr. Wolf asserted that PBDF and the Authority are in "general agreement" concerning certain points. This is not the case. The matters on which Mr. Wolf asserts there was "general agreement" are points to which the Authority was prepared to agree as part of a package of amendments that included the issues upon which Mr. Wolf concedes there was no agreement.
11. None of the arguments made by Mr. Wolf in his letter of 14 January 2022 changed the Authority's position as to what constitutes a fair allocation of the financial impact of COVID as between the Authority, and PBDF and its shareholders as most-recently stated in the letter of 2 August 2022 that is at Tab 10 of the Brief of Exhibits.

### **III. Response to Pearce 13 Nov 22 Affidavit**

#### **A. Minimum Rent is \$333,333 per month**

12. In paragraphs 53 and 103 of his Affidavit, Mr. Pearce argues that minimum base rent under the Lease is "predicated upon" 20% of PBDF's gross sales and that was the "underlying conceptual basis" for the base rent required by the Lease. I have no idea what PBDF had in mind when it offered to pay minimum rent of \$333,333 per month, but the Lease is clear that the minimum rent required to be paid by PBDF is \$333,333 per month notwithstanding PBDF's gross sales—the Lease assigns the risk of lower-than-anticipated sales to PBDF.

#### **B. Authority did not Agreed to Accept Percentage Rent**

13. In paragraph 55 of his Affidavit, Mr Pearce asserts that the Authority has accepted PBDF's rent payments. This is somewhat misleading as it implies that the Authority made the decision to accept the amounts paid to it by PBDF. This is not correct. PBDF pays its rent by direct deposit and the Authority did not return any of the rent paid by PBDF. Rent paid by PBDF was applied against the rent owing in accordance with the Lease. The Authority repeatedly advised PBDF that it was not agreeing that PBDF could pay percentage only rent.

14. In paragraph 103 of his Affidavit, Mr. Pearce asserts that the Authority's insistence that PBDF pay the \$333,333 base rent required by the Lease after 14 December 2021 is "inconsistent with the normal payment practices at the time of the Appointment Order". This is disingenuous. Mr. Pearce is aware that the Authority specifically rejected the request by PBDF to pay percentage only rent and consistently objected to PBDF paying percentage only rent.

**C. Authority Acted in Good Faith and Consulted with PBDF**

15. In paragraphs 17-21, 27 and 32 of his Affidavit, Mr. Pearce: (a) implies that the Authority did not consult with PBDF concerning the impact of the COVID-related restrictions as required by Article 18.07 of the Lease; (b) asserts that the Authority has not acted reasonable as required by Art 2.15 of the Lease; and (c) implies that the Authority has not complied with some duty of good faith and honest performance. This is not accurate.
16. The Authority has always dealt in good faith, and been honest, with PBDF. The Authority has fulfilled its obligation to consult with PBDF.
17. Aside from engagements surrounding the First Rent Deferral in April of 2020 and the (aborted) Second Rent Deferral in November of 2020, there have been other engagements between PBDF and the Authority concerning the impact of COVID and the (further) accommodations that the Authority might be willing to make to address the impact that COVID was having (and had) on PBDF.
18. While I do not propose to detail all of the various dealings between PBDF and the Authority, I will provide a high level overview of some of the engagements that took place as contemplated by Article 18.07 of the Lease. The results of these dealings are summarized in Mr. Wolf's letter of 14 January 2022.
19. There were exchanges of written communications between PBDF and the Authority in December of 2020. At that time, the Authority offered to assist PBDF to obtain Federal government assistance and, to that end, to arrange a meeting with the Member of Parliament for Niagara Centre. PBDF did not respond to that offer.
20. As noted in paragraph 32 of the Pearce 13 Nov 22 Affidavit, I and Karen Costa met with Mr. Pearce and the President and Managing Partner of PBDF Greg O'Hara on 13 May 2021 to discuss the

situation relating to the closure by PBDF of the duty free on the Canadian side of the Peace Bridge. At that meeting, PBDF presented for the third time the same proposal to address the rent owing and payable by PBDF. The Authority was clear that this proposal was not acceptable the first two times it had been presented and remained unacceptable. At the meeting on 13 May 2021, PBDF made it clear that: (a) the shareholders of PBDF were not prepared to provide financial support to PBDF; and (b) PBDF would not apply for the Business Credit Availability Program.

21. In August of 2021, there was a without prejudice proposal presented to the Authority by PBDF and a meeting among the parties' lawyers. That proposal included PBDF paying percentage only rent. I am advised by Chris Stanek of Gowling and verily believe that in a telephone call on or about 27 September 2021, he told PBDF's lawyer—then Ben Mills of Colin Bedard LLP—that a proposal by PBDF that it pay only percentage rent was not acceptable to the Authority. On or about 30 September 2022, PBDF, through its lawyers, indicated that it would be in a position to provide the Authority with an offer to address the rent arrears by 15 October 2021. On 15 October 2021, Mr. O'Hara made another without prejudice proposal to the Authority. On 26 October 2021, the Authority responded to PBDF's proposal and provided a counter-proposal.

22. In a 24 December 2021 e-mail, Mr. Wolf wrote:

*Further to our last call we have acquired more information from our client, participated in a several hours long meeting to consider options, and plan to finish our review of material over the holidays.*

*We plan to write to you with more fulsome information after Christmas and to propose a further meeting with clients to try to address a commercially reasonable LAA having regard to subjective ability to pay, and with objective reference to how the market place is assisting other duty free stores.*

*We think this negotiation process may be facilitated by a mediator....*

*The sooner we start the booking process the earlier date we could achieve. Ideally, we could find a cancellation the first or second week of January before the return date of the hearing.*

23. On 30 December 2022, Mr. Stanek responded

*We note that your e-mail offering a mediation was not accompanied by a proposal designed to deal with your client's default. Based upon the proposals exchanged to date, our respective clients' positions are too far apart for a mediation to be effective.*

*All of the proposals made by your client to date provided that your client will only pay a small portion of the arrears each month out of future revenue over a significant period of time. That is not acceptable to our client. Your client is a party to a binding Lease that our client is entitled to rely upon. Your client is in default and owes substantial arrears. Any proposal must include a provision for the repayment of the arrears and go-forward rent supported by a detailed business plan and personal guarantees from individual(s) with financial means and/or third-party security. Once we have seen such a proposal with this supporting information, we are prepared to re-visit whether there is room for settlement and whether a mediator may be able to assist with any negotiations.*

24. PBDF has never engaged with the Authority to negotiate a mutually acceptable reduction in the minimum rent payable under the Lease. After the Authority refused to agree to PBDF paying only percentage rent, PBDF ignored the requirements of the Lease and began to unilaterally pay percentage only rent, which PBDF unilaterally determined would be 20% of sales. PBDF, first relying on the Provincial eviction moratorium and then the Appointment Order, has continued to pay percentage only rent over the Authority's objection. As noted in my Affidavit sworn on 7 September 2022, the Authority advised the Monitor on 7 January 2022 that PBDF was not paying the required minimum rent and has repeatedly advised PBDF that it did not accept the payment of percentage only rent.

**D. Authority met with FDFA**

25. There is no dispute that when Frontier Duty Free Association ("FDFA") first reached out to the Authority and asked for a meeting, the Authority declined. This was because they did not represent PBDF. However, on 10 March 2022, the Authority responded to further request(s) for a meeting confirmed that it would meet with FDFA on 25 March 2022.
26. In paragraph 86 of his Affidavit, Mr. Pearce implies that the Authority excluded PBDF from the meeting on 25 March 2022 and refused to discuss the specifics of the Lease with PBDF. That is not accurate.
27. In the letter to FDFA on 10 March 2022 in which it agreed to meet with FDFA, the Authority wrote "[y]ou will appreciate that we will not be able to discuss with you the specifics of the situation involving [PBDF] or the offers that have been made to them unless you obtain written consent from them for us to speak to you about those matters." In that letter, the Authority also asked FDFA for an outline of what they proposed to discuss at the meeting on 25 March 2022. For some reason, that letter does not appear to have been attached as an Exhibit to the Pearce 13 Nov 22 Affidavit.

28. PBDF did not provide consent for the Authority to discuss with FDFA its specific situation and the outline that FDFA provided to the Authority—which I assume was shared with PBDF—did not include any discussion of PBDF’s specific situation or the Lease. My e-mail of 21 March 2022 that is attached as Exhibit T to and referred in paragraph 86 of the Pearce 13 Nov 22 Affidavit was more of a question than a statement—I was confirming whether PBDF would be attending the meeting and whether there was intended to be a discussion of the Lease. In my view, the entire purpose of meeting with FDFA was to address PBDF’s specific situation and the Lease because the information that FDFA presented to the Authority’s Board on 25 March 2022 was not unknown to the Authority.
29. The Authority considered the points made by FDFA in its communications with the Authority and it did not (and does not) change the Authority’s views as to what it is prepared to agree to in terms of a rent abatement and conditions for the repayment of the remaining rent owing by PBDF.

**E. Authority has Offered PBDF a Generous Rent Abatement**

30. In paragraph 18 of his Affidavit, Mr. Pearce asserts that the Authority is appearing to take the position that minimum rent is payable by PBDF from 31 July 2020 onward. As noted in the letter at Tab 10 of the Brief of Exhibits, the Authority has confirmed that it is willing to give PBDF a 50% rent abatement for the period that PBDF (voluntarily) closed the duty free as a result of the COVID-related restrictions imposed on cross-border travel subject to their being an acceptable agreement to pay the remaining rent owing.
31. In paragraph 19 of his Affidavit, Mr. Pearce argues that the Authority is asserting that the “Border Restrictions” had no impact on the Lease beyond 31 July 2020. That is untrue. The Authority acknowledged in the First Rent Deferral and continues to acknowledge that the “Border Restrictions” have impacted PBDF’s business—although the Authority does dispute that PBDF was required to stop operating the duty free—and has offered to give PBDF a generous rent abatement and to negotiate terms for the repayment of the remaining rent over time.
32. The barrier to the parties reaching an agreement is that PBDF wants a 75% rent abatement and does not want to agree to a plan to repay the remaining rent arrears on terms that are acceptable to the Authority.

**F. Factors Considered by the Authority**

33. In paragraph 27 of his Affidavit, Mr. Pearce asserts that it was and continues to be his expectation that the Authority would take into consideration the fact that border restrictions impacted the ability of PBDF and to generate sales. The Authority has taken those factors into account in determining that it is prepared to provide PBDF with a 50% rent abatement, subject to a plan acceptable to the Authority being put in place to repay the remaining arrears. The Authority also considered, among other factors: (a) that PBDF voluntarily closed the duty free while other operators did not; (b) the financial interest of PBDF's shareholders and the need to fairly apportion the financial impact of COVID between the Authority and PBDF; (c) the arrangements made with other duty free operators; (d) Mr. Wolf's argument in his letter of 14 January 2022; and (e) the information provided by FDFA.

**G. PBDF was not Forced to Close the Duty Free**

34. In paragraphs 27, 46, 106 and 107 of his Affidavit, Mr. Pearce implies that PBDF was prevented by the Government from continuing to operate the duty free, ordered to close the duty free and forced to close that duty free. Mr. Pearce knows that is not accurate. It was PBDF's decision to close the duty free at the Peace Bridge due to the reduced traffic caused by the Government border restrictions. I note that other duty frees remained open. For example, the duty free on the US side of the Peace Bridge and duty frees at other international bridges, including the Blue Water Bridge in Sarnia, Ontario and the Ambassador Bridge in Windsor, Ontario remained open.

**H. Authority Cannot Subsidize PBDF or its Shareholders**

35. In paragraph 105 of his Affidavit, Mr. Pearce asserts that the Authority has USD\$77MM in unrestricted cash on hand. This is correct. However, the Authority also has significant long-term debt. The Authority's cash reserves are intended for the care and maintenance of the Peace Bridge, which is a significant asset that requires extensive capital expenditures. Those reserves cannot be used to subsidize PBDF and its shareholders.
36. I note that: (a) while indicating how much in rent PBDF has paid to the Authority—see paragraph 5 of the Pearce 13 Nov 22 Affidavit—Mr. Pearce does not disclose how much in profit PBDF realized since 1986; and (b) while asserting that it is impossible for PBDF to pay rent as required by the Lease—see paragraph 32 of the Pearce 13 Nov 22 Affidavit—Mr. Pearce does not provide any



information as to the net personal wealth of the shareholders of PBDF or indicate why they will not provide financial support to PBDF.

**I. The Authority is not an “Outlier”**

37. Any assertion that the Authority is an “outlier” in terms of what it has offered to PBDF is not correct. What the Authority has offered to PBDF appears to be more than reasonable having regard to what other international bridge authorities have offered to their duty free tenants.
38. I have confirmed with that Niagara Falls Commission that the operators of the duty frees at the Rainbow Bridge and the Leiston Bridge paid less than the minimum rent required by the applicable leases during COVID, but they were not given a rent abatement and have agreed to pay over time 100% of the rent that they were unable to pay during COVID plus interest.
39. PBDF relies on the assertion that the Sault Ste Marie Bridge Authority (the “**SSM Authority**”) provided a rent abatement to the duty free store at the Sault Ste Marie International Bridge. I spoke to the General Manager of the SSM Authority who advised me that the abatements it provided to its duty free did not result in the SSM Authority being “out-of-pocket”. The SSM Authority is a Crown corporation. While I am not privy to its financial dealings with the Federal government, I assume that it received COVID relief money from the Federal government.

**J. Authority has not Favoured the US Duty Free**

40. In paragraphs 101 to 104 of his Affidavit Mr. Pearce asserts that: (a) the operator of the US duty free was, in 2021, paying only percentage rent; and (b) the Authority has given preferential treatment to the operator of the US duty free by requiring that PBDF pay the base rent required by the Lease. This is unfair. The Authority negotiated an agreement with the operator of the US duty free that contemplated the temporary deferral of rent in 2021 similar to what was provided for in the First Rent Deferral. There is now an agreement in place with the operator of the US duty free that provides for a much smaller rent abatement than has been offered to PBDF and the deferred rent owing by the operator of the US duty free is being repaid, with interest.

**K. Authority has Considered Facts Raised by Mr. Pearce**

41. In paragraphs 116 to 121 of his Affidavit, Mr. Pearce argues, essentially, why the Authority ought to provide PBDF with the concessions it is demanding from the Authority. The Authority is aware of and has considered all of the matters raised by Mr. Pearce in these paragraphs and they do not change the Authority's position that it wants to have the right to exercise its remedies based on the failure of PBDF to pay base rent from 14 December 2021 as required by the Lease and the Appointment Order.

**L. Articles 18.07 and 18.08 of the Lease**

42. In paragraphs 17, 20, and 32 of his Affidavit, Mr. Pearce refers to Article 18.07 of the Lease and implies that this provision requires that the Authority agree to amend the Lease as requested by PBDF. This is not accurate.
43. Article 18.07 does not require that the Authority accede to PBDF's demand with respect to amendments to the Lease based on a material adverse effect caused by the introduction of or a change to an Applicable Law. It requires that the Authority consult with the Tenant to discuss the impact to the Lease of any such introduction of or change to an Applicable Law. The Authority has done this. The issue is that PBDF wants amendments to the Lease to which the Authority is not prepared to agree.
44. I note that the Lease defines "Unavoidable Delay" as:

*...any delay by a party in the performance of its obligations under this Lease caused in whole or in part by any acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, sabotage, war, blockades, insurrections, riots, epidemics, washouts, nuclear and radiation activity or fallout, arrests, civil disturbances, explosions, unavailability of materials, breakage of or accident to machinery, any legislative, administrative or judicial action which has been resisted in good faith by all reasonable legal means, any act, omission or event, whether of the kind herein enumerated or otherwise, not within the control of such party, and which, by the exercise of control of such party, could not have been prevented. Insolvency or lack of funds on the part of such party shall not constitute an unavoidable delay.*

45. And Article 18.08 of the Lease says:

*Notwithstanding anything to the contrary contained in this Lease, if any party hereto is bona fide delayed or hindered in or prevented from performance of any term, covenant or act required hereunder by reason of Unavoidable Delay, then performance of such term, covenant or act is excused for the period of the delay and the party so delayed, hindered or prevented shall be entitled to perform such term, covenant or act within an appropriate time period after the expiration of the period of such delay. **However, the provisions of this Section 18.06 (sic) do not operate to excuse the Tenant from the prompt payment of Rent and any other payments required by this Lease.** (emphasis added)*

**M. Authority is not the Government or a Government Agent**

46. In paragraphs 14-16 of his Affidavit, Mr. Pearce asserts that the Authority holds and administers the Peace Bridge on behalf of the Canadian and New York State governments. That is not correct. The Authority operates at arms length from the Canadian and New York State governments. Neither government has any direct involvement in the day-to-day business of the Authority and neither government provides the Authority with any direct or indirect financial support. Their involvement is limited to appointing the Authority's directors. The ownership of the Peace Bridge will "revert" to the Canadian and New York State government until 2046, at the earliest.
47. In paragraphs 23, 24 and 41 of his Affidavit, Mr. Pearce argues that the Authority is: (a) a 'government authority' for the purposes of the Lease; and (b) somehow responsible for the COVID-related border restrictions and what he asserts is the inadequacy of the Federal Government's COVID relief programs. This argument is simply absurd.
48. In paragraphs 33-45 of his Affidavit, Mr. Pearce makes assertions with respect to the adequacy of the Federal government's COVID relief packages. That is not something that is under the control of the Authority.

**N. Authority is not Subject to Treasury Board Direction**

49. In paragraph 36 of his Affidavit, Mr. Pearce asserts that the Authority refused to follow a Treasury Board of Canada Directive. This is not true. The Authority is not a "federal landlord" that is subject to Treasury Board direction.

**O. Payment over of Rent Subsidies**

50. In paragraphs 7 and 43 of his Affidavit, Mr. Pearce asserts that PBDF has paid to the Authority 20% of its gross sales as well as any government rental assistance that it has received, including amounts received under the Tourism and Hospitality Recovery Program (the “**THRP**”), and provided the Authority with proof of this. I question whether this is accurate. Exhibit E to the Pearce 13 Nov 22 Affidavit, which I saw for the first time when I reviewed the Affidavit, appears to indicate that, except for one month, PBDF did not pay over any portion of the assistance that it received under the THRP.

**P. Authority did not Notify RBC of the Lease Defaults**

51. In paragraphs 60 and 93 of his Affidavit, Mr. Pearce implies that the Authority contracted RBC and advised it of the defaults by PBDF. The default notices dated 8 September 2021 delivered by the Authority to PBDF were not copied or sent to RBC. Mr. Pearce acknowledges in paragraph 59 that it was PBDF that provided the notices to RBC.
52. On or about 23 September 2021, PBDF’s lawyers—then Colin Bedard LLP—connected the lawyers for the Authority with the lawyers for RBC and indicated that each of the Authority and RBC had made certain demands of PBDF and suggesting that the parties communicate.
53. It is my understanding that RBC and the Authority entered into a forbearance agreement, although I have not seen a copy of that agreement. Based on the letter attached as Exhibit M to the Pearce 12 Dec 21 Affidavit, I understand that the forbearance was somehow based on PBDF addressing the defaults raised by the Authority.
54. In or about October 2021, RBC, via its lawyers, requested that the Authority provide it with notice prior to taking steps to exercise its remedies under the default provisions of the Lease so that RBC could seek to appoint a receiver over the property and assets subject to its security, which RBC asserts includes the Lease. The Authority, via its lawyers, agreed to that request.

**Q. Authority does not Know why PBDF Disputes Rent Owing**

55. In paragraph 18(d) of his Affidavit, Mr. Pearce argues that the Authority has acknowledged that there is a dispute as to how much rent is owing as at 14 December 2021. Mr. Pearce mischaracterizes

my evidence. In paragraph 12 of my 7 September 2022 Affidavit I indicate “[a]lthough there **may be** a dispute as to how much is owing to PBDF...” (emphasis in original)

56. My understanding that PBDF disputes the amount of rent owing to the Authority as at 14 December 2021 is based on paragraph 14 of the Monitor’s First Report dated 14 January 2022, wherein the Monitor indicates that PBDF “continues to dispute the amounts claimed by the Landlord in respect of rental arrears and current rent owing”. As stated in footnote 1 to my 7 September 2022 Affidavit, PBDF has never provided the Authority with the specifics of any dispute concerning the rent or told the Authority what it thinks is owing.

**R. Business Interruption Insurance**

57. In paragraphs 110 and 111 of his Affidavit, Mr. Pearce indicates that the Authority has not disclosed whether it applied for business interruption coverage. PBDF has never asked for this information.
58. The Operating Costs to which PBDF is required to contribute do include business interruption insurance. The Authority has not made a claim based on a “business interruption” because the Canada/US border was not actually closed during the COVID pandemic. Travel across the border was restricted and only essentially travellers were permitted to cross the border, but the Peace Bridge remained operational.
59. I note that PBDF is itself required by the Lease to maintain business interruption insurance, but has not disclosed whether it made a claim under that policy.

**S. Authority does not Believe Mediation would be Productive**

60. In paragraph 82 and 122 of his Affidavit, Mr. Pearce asserts that the Authority has refused to engage in mediation or dispute resolution. The Authority’s position has been provided to PBDF—mediation to be productive there must be something to mediate and unless PBDF is prepared to accept the rent abatement that the Authority has offered and put forward a plan to repay the remaining arrears that is backed by financial projections, there is nothing to mediate.
61. As noted above, on 30 December 2021, in response to a suggestion that the parties engage in mediation, Mr. Stanek wrote to Mr. Wolf:

*We note that your e-mail offering a mediation was not accompanied by a proposal designed to deal with your client's default. Based upon the proposals exchanged to date, our respective clients' positions are too far apart for a mediation to be effective.*

*...Once we have seen such a proposal with this supporting information, we are prepared to re-visit whether there is room for settlement and whether a mediator may be able to assist with any negotiations.*

62. PBDF never presented the Authority with a proposal that satisfied the Authority's requirements as outline by Mr. Stanek on 30 December 2022 and never provided the Authority with a business plan.

**T. PBDF was Required to Provide Washrooms**

63. There is no dispute that for a period of time the duty free was closed PBDF did not provide washrooms to travellers crossing the Peace Bridge. In paragraphs 46 and 47 of his Affidavit, Mr. Pearce asserts that PBDF was not required to provide washrooms for travellers crossing Peace Bridge. This is not accurate. The Lease requires that PBDF provide and maintain public washrooms 24 hours a day, 365 days a year. Section 9.02 of the Lease says

*The Tenant shall occupy the Leased Premises during the Term of the Lease and shall continuously and actively carry on the Permitted Use in the whole of the Leased Premises. In the conduct of the Tenant's business pursuant to the Lease the Tenant shall:*

- (a) operate its business 24 hours a day, seven days a week, 365 days a year....;*
- ...*
- (e) keep the leased premises clean, neat and free of hazards and fire dangers at all times;*
- ...*
- (f) **provide adequate public restrooms for the anticipated number of travelers using the Peace Bridge, including persons who may not be patrons of the duty free shop;***  
*(emphasis added)*

**U. Authority does not Agree Provincial Moratorium Applied**

64. In paragraphs 61 and 62 of his Affidavit, Mr. Pearce argues, based on statements made by me in my 7 September 2022 Affidavit, that the Authority was "aware that it would be unlawful to terminate the Lease" when it issued default notices to PBDF and advised RBC that it would be proceeding to exercise its default remedies under the Lease. This is not entirely accurate. While the Authority was aware of the Provincial moratorium on eviction, there were issues as to, for example, whether Part IV applied to prevent the Authority from terminating the Lease.

65. I think that I was clear in paragraph 33 of my 7 September 2022 Affidavit that

*...Notwithstanding whether the Monitor consented to the exercise of the Authority of its remedies or the Court lifted the stay to permit the Authority to exercise its remedies, the **Authority would have had to engage in litigation with PBDF over the scope of the Provincial moratorium and whether it applied to prevent the Authority from exercising its remedies under the Lease**.* (emphasis added)

#### **V. PBDF Refused to Provide Financial Information**

66. In paragraph 64 and 65 of his Affidavit, Mr. Pearce asserts that PBDF is not obliged to provide the Authority with any financial information aside from monthly statements of gross sales and audited financials. That is incorrect. Article 16.03 of the Lease says:

**(a) The Tenant shall, upon request, provide the Landlord with such information as to the financial standing and corporate organization of the Tenant as the Landlord or the Mortgagee requires. Failure of the tenant to comply with the Landlord's request shall be a default under this lease.**

*(b) Without limiting the generality of the foregoing, the Tenant shall provide the Landlord with its most recent audited annual financial statement immediately upon request and in any event within one hundred and twenty (120) days of the end of each fiscal year of the tenant.* (emphasis added)

#### **W. Other Information**

67. In his e-mail to the Monitor and its lawyers on 9 June 2022—Exhibit K to the Pearce 13 Nov 22 Affidavit—Mr. Wolf indicates that Vance Battaway—the Member of Parliament for Niagara Centre—suggested a 3-way meeting with the Authority, PBDF and the Federal government. I was not advised of any suggested proposal and first learned of it when I saw Mr. Wolf's e-mail.

#### **IV. PBDF's Cross-Motion**

68. PBDF's Cross-Motion seeks broad relief against the Authority, including declarations with respect to its rights under the Lease, Court-ordered amendments to the Lease and damages as well as an Order requiring that PBDF attend a mediation.

69. As noted by Mr. Wolf in his e-mail of 14 January 2022 attached as Exhibit A to the Pearce 13 Nov 22 Affidavit that the Authority is not an Applicant or a Respondent on any pending Application involving PBDF. As PBDF's landlord, the Authority is impacted by the stays contained in the Appointment Order, but is not a party to RBC's Application. The Authority is required to bring its Motion in RBC's Application because of the stays included in the Appointment Order and the refusal of the Monitor to consent to the Authority exercising its remedies under the Lease based on the refusal of PBDF to pay rent as required by the Lease.
70. The Authority is prepared to respond to any claim properly brought against it by PBDF, including any claim under the *Commercial Tenancies Act* seeking relief from forfeiture and/or damages.


**V. Conclusion**

71. The Authority remains willing to try to reach an agreement with PBDF to avoid eviction, but that would involve PBDF providing a workable proposal that provides for the payment of the rent that is owing that is supported by financial projections and backed by security or guarantees. The Authority is prepared to provide a 50% rent abatement for the period that PBDF (voluntarily) closed the duty free, but there has to be a firm commitment from PBDF as to how the remaining rent owing will be repaid. PBDF's shareholders cannot sit on the sidelines and expect the Authority to bear the brunt of the financial impact of their decision to close the duty free on the Canadian side of the Peace Bridge.

**SWORN BEFORE ME** remotely at Nuevo Vallarta  
in the Republic of Mexico and the City of Toronto, in  
the Province of Ontario, this 26<sup>th</sup> day of November  
2022.



**A COMMISSIONER FOR TAKING AFFIDAVITS**

  
**RON RIÑAS**



**ROYAL BANK OF CANADA**  
Applicant

-and-

**PEACE BRIDGE DUTY FREE INC.**  
Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF RON RIENAS**  
(Sworn 26 November 2022)

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