

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ROYNAT INC.

Applicant

– and –

TAMTAN INC. and 1308963 ONTARIO LIMITED (o/a EZ FOOD GROUP)

Respondents

**APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.
1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3 AS AMENDED**

**FACTUM OF THE APPLICANT
(Re: Appointment of a Receiver)
Returnable October 10, 2019**

October 8, 2019

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**FACTUM OF THE APPLICANT
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1. This Application is made by Roynat Inc. (“**Roynat**”) for an order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario) (the “**CJA**”) appointing msi Spergel Inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”), without security, of all of the assets and undertakings of TamTan Inc., (the “**Borrower**”) and 1308963 Ontario Limited o/a EZ Food Group (the “**Guarantor**”, together with the Borrower, the “**Debtors**”), acquired for, or used in relation to a business carried on by the Debtors, including the premises located at 1405 Morningside Avenue in Scarborough,

Ontario (the “**Commercial Property**”) owned by the Borrower and occupied by the Guarantor, excluding certain accounts subject to the Account Restraint Orders (as defined herein) (collectively, the “**Property**”).

PART I - OVERVIEW

2. The receivership sought by Roynat’s application is intended to facilitate the sale of the Commercial Property, which the Borrower has been unable to accomplish in the eight months that it has been in default of its obligations to Roynat. The Commercial Property has in effect been seized by the Crown in connection with a criminal investigation of the Borrower’s principal, and the Crown has been consulted about these proceedings. No operations or employees are expected to be impacted, or there are no none.

3. The Borrower and the Guarantor are in default of their obligations to Roynat and are indebted to Roynat in the amount of \$2,371,607.71 as of September 26, 2019. Notices of Intention to Enforce under section 244 of the BIA have been delivered to each Debtor and in both instances the 10-day notice period has expired. Roynat has demanded repayment, all applicable notice periods have expired, all reasonable efforts by the Debtors to sell the Commercial Property or repay the indebtedness have failed and Roynat is seeking to enforce its security by appointing the Receiver.

4. The Borrower’s primary asset, and Roynat’s primary collateral, is the Commercial Property which it leases to the Guarantor. Since February 12, 2019, the Commercial Property has been subject to the Real Property Restraint Order (defined below), issued in connection with an RCMP investigation into allegations that the property is an offence-related property (the “**RCMP Investigation**”). The Real Property Restraint Order is administered by the Seized Property

Management Directorate (the “SPMD”), whom Roynat has consulted with in connection with preparing these proceedings.

5. Certain of the Borrower’s bank accounts were also frozen by the Public Prosecution Service of Canada (“PPSC”) as a result of the RCMP Investigation. The status of the frozen accounts has made it impossible for the Borrower to pay the principal and interest on the Roynat indebtedness.

6. In spite of the ongoing defaults and the RCMP Investigation, Roynat agreed to forbear from enforcing its rights in order to provide the Borrower with an opportunity to market and sell the Commercial Property and repay its obligations. Multiple attempts to sell the property over the last six months have failed, and Roynat has lost all confidence in the Borrower’s ability to facilitate a sale outside of a court process.

7. Roynat understands that no business being conducted by the Guarantor at the Commercial Property, and the proposed Receivership Order does not extend to certain of the Debtors bank accounts, which are already frozen. Accordingly, the only real function of the Receiver will be to sell the Commercial Property.

8. The appointment of the Receiver is required to preserve value, maximize recovery and address the interests of other stakeholders under the circumstances, including the PPSC, the SPMD and the Crown.

9. The appointment of Spergel as receiver is just and convenient in the circumstances.

PART II – FACTS

10. The facts relevant to this Application are set out in detail in the affidavit of Silvio Marsili, sworn October 3, 2019 (the “**Marsili Affidavit**”). Below is a brief summary of those facts. Terms not otherwise defined herein have the meanings ascribed to them in the Marsili Affidavit.

A. Overview of the Business

Background

11. The Borrower is an Ontario incorporated real estate holding company, whose primary asset is the Commercial Property. Roynat understands that the Guarantor, operating as EZ Foods, is a food processing company, however Roynat is unaware of the scope or scale of its operations and believes that it has ceased carrying on business.

Marsili Affidavit at paras 13, 16.

B. Criminal Sanctions

The RCMP Investigation & Restraint Orders

12. The RCMP Investigation resulted in the Federal prosecution of the Borrower’s principal, among others, by the PPSC.

Marsili Affidavit at para 7.

13. On February 12, 2019, the Court of Quebec (Criminal and Penal Division) issued the Restraint Order pursuant to sections 490.8 and 490.81 of the *Criminal Code* (Canada) in respect

of the Commercial Property (the “**Real Property Restraint Order**”) in conjunction with the RCMP Investigation.

Marsili Affidavit at paras 21-22.

14. On February 8 and 12, 2019, the Court of Quebec (Criminal and Penal Division) also issued account restraint orders pursuant to sections 490.8 and 490.81 of the *Criminal Code* (Canada) in respect of certain of the Debtors’ bank accounts (the “**Account Restraint Orders**”, collectively with the Real Property Restraint Order, the “**Restraint Orders**”).

Marsili Affidavit at paras 7, 24.

15. Roynat did not receive its monthly principal loan payment from the Borrower when it was due on February 15, 2019. The notice Roynat received indicated that the payment was returned due to the Borrower’s Royal Bank of Canada account being frozen by the Account Restraint Orders.

Marsili Affidavit at para 25.

16. The Restraint Orders constitute a covenant default under the 2014 Facility Letter and caused the payment default described above.

C. Liabilities of the Debtors

17. Roynat is the secured creditor of the Borrower and is owed \$2,371,607.71 as of September 26, 2019.

Marsili Affidavit at para 4.

18. On June 24, 2014, Roynat issued the 2014 Facility Letter which was accepted by the Borrower and the Guarantor on July 16, 2014. Pursuant to the 2014 Facility Letter, Roynat advanced a term loan to the Borrower in the amount of \$2,692,600 (the “**Term Loan**”).

Marsili Affidavit at para 28.

19. On May 24, 2016, Roynat issued an Offer of Extension and Supplemental Financing to the Borrower, which was accepted by the Borrower and the Guarantor on the same day (the “**Extension and Supplemental Financing Letter**” and the 2014 Facility Letter as amended by the Extension and Supplemental Financing Letter, the “**Facility Letter**”). Pursuant to the terms of the Extension and Supplemental Financing Letter, Roynat extended the maturity date of the Term Loan and agreed to provide the Borrower with additional financing.

Marsili Affidavit at para 29.

20. The Borrower’s obligations under the Facility Letter are secured by, among other things, a Demand Debenture and a General Assignment of Leases and Rents, dated August 14, 2014, granted by the Borrower in favour of Roynat, which charge the Commercial Property and all personal property of the Borrower (collectively the “**Borrower Security Documents**”). Roynat has registered financing statements pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”) against the Borrower. As of September 24, 2019, no other financing statements have been registered against the Borrower pursuant to the PPSA.

Marsili Affidavit at paras 29-33.

21. The Term Loan is guaranteed by the Guarantor, pursuant to a Guarantee and Indemnity (the “**Guarantee**”) dated August 14, 2014, and secured by a General Security Agreement dated

August 14, 2014, issued by the Guarantor in favour of Roynat (the “**Guarantor GSA**”, and together with the Borrower Security Documents, the “**Security**”). Roynat has registered financing statements pursuant to the PPSA against the Guarantor. As of September 24, 2019, no other financing statements have been registered against the Guarantor pursuant to the PPSA.

Marsili Affidavit at paras 34-36.

D. Other Creditors

22. The parcel register in respect of the Commercial Property reflects an easement and cost sharing agreement among the Slough Estates Canada Limited, The Trustees of the Malvern Congregation of Jehovah’s Witnesses, and MXT Investment Corp registered on the Commercial Property (“**Cost Sharing Agreement**”). Roynat is unaware whether amounts are currently owed under the Cost Sharing Agreement.

Marsili Affidavit at para 38.

23. As of September 26, 2019, the Debtors owed \$90,685.14 to the City of Toronto, inclusive of interest, fees and penalties. After September 30, 2019, additional interest began to accrue at 1.25%. Currently, no amounts are known to be owing for utilities.

Marsili Affidavit at para 39.

24. Additionally, there are two writs of execution registered against the Debtors, effective April 11, 2017 (the “**2017 Writ**”) in favour of Employment Panache and August 16, 2019 (the “**2019 Writ**”) in favour of Argil Property Tax Services Paralegal Professional Corporation. The 2017 Writ is for the face amount of \$70,874.41 and costs of \$926.93. The 2019 Writ is for the face amount of \$12,482.68 and costs of \$191.00.

Marsili Affidavit at para 40.

E. Events of Default

25. The issuance and registration of the Real Property Restraint Order, and the restraint and freezing of certain of the Borrower's accounts are clear defaults under the Facility Letter and collectively referred to as the Events of Default ("**Events of Default**").

Marsili Affidavit at paras 8, 41.

26. In addition to the defaults related to the RCMP Investigation, the Borrower failed to pay monthly principal loan instalments of \$12,050 on February 15, 2019, March 15, 2019, April 15, 2019, May 15, 2019, June 15, 2019, July 15, 2019, August 15, 2019 and September 15, 2019. As the Borrower's accounts remain frozen, no payment is expected to be made on October 15, 2019.

Marsili Affidavit at para 42.

F. Borrower Demand and Notice of Intention to Enforce Security

27. By letter dated April 8, 2019, Roynat gave notice of the Events of Default and made formal demand for immediate repayment of the Indebtedness. (the "**Borrower Demand Letter**"). Attached to the Borrower Demand was a Notice of Intention to Enforce Security pursuant to section 244 of the BIA (the "**Borrower 244 Notice**").

Marsili Affidavit at paras 43 and 44.

G. Initial Forbearance

28. Shortly after issuing the Borrower Demand and Borrower 244 Notice, Roynat was advised that the Borrower was party to an agreement of purchase and sale for the Commercial

Property, a portion of the proceeds of which would be used to repay the Borrower's indebtedness to Roynat in full. In order to facilitate this transaction, the Borrower requested and Roynat agreed to an extension of time and forbearance. Despite Roynat's patience, the transaction did not close.

Marsili Affidavit at paras 45 and 46.

29. On June 18, 2019, after the first proposed transaction fell through, Roynat issued a demand to the Guarantor for payment of the Guaranteed Liabilities (the "**Guarantor Demand**"). Attached to the Borrower Demand was a Notice of Intention to Enforce Security pursuant to section 244 of the BIA (the "**Guarantor 244 Notice**").

Marsili Affidavit at para 47.

30. On June 18, 2019, Roynat also issued a notice of sale under mortgage pursuant to the Mortgages Act (Ontario) to, among others, the Borrower and Guarantor (the "**Notice of Sale**").

Marsili Affidavit at para 48.

H. Second Forbearance

31. Shortly after issuing the Guarantor Demand, Guarantor 244 Notice and Notice of Sale, Roynat was advised on or about July 5, 2019 that the Borrower and Guarantor had entered into another agreement of purchase and sale in respect of the Commercial Property and certain equipment of the Guarantor (the "**Second APS**"). Based on assurances that each of the Borrower, Guarantor and potential purchaser were determined to close this new transaction, Roynat continued to cooperate with the parties in an effort to facilitate this transaction, notwithstanding

that the notice period under the Notice of Sale Borrower 244 Notice and Guarantor 244 Notice had expired and that the Indebtedness owing to Roynat remained outstanding.

Marsili Affidavit at para 49.

32. Despite Roynat's continued cooperation, it had become clear that the parties faced challenges in satisfying the conditions required to advance the transaction contemplated by the Second APS to closing. In light of these challenges, Roynat's counsel issued a letter to Borrower's Counsel (the "**August 23rd Letter**") advising that if the transaction contemplated by the Second APS did not close by October 24, 2019 (which was the outside date of the purchase agreement), Roynat intended to seek the appointment of a receiver over the Debtors assets, including the Commercial Property. The August 23rd Letter expressly reserved Roynat's right to exercise all the of the rights and remedies it considered appropriate prior to October 24, 2019.

Marsili Affidavit at paras 50-52.

33. On August 26, 2019, Roynat was advised by the Purchaser's real estate agent ("**Purchaser's Agent**") that the Borrower had failed to satisfy certain diligence conditions, and the Purchaser had issued a Mutual Release Letter, citing lack of confidence in the Borrower's ability to meet its obligations under the Second APS. Shortly thereafter, the parties had agreed to a new diligence deadline of September 9, 2019, which was subsequently missed and extended to September 16, 2019, and then again missed and extended to September 30, 2019.

Marsili Affidavit at paras 53-55.

I. The Proposed Receiver

34. Spergel is a licensed insolvency trustee and has consented to act should the Court so appoint it.

Marsili Affidavit at para 62.

PART III – ISSUES

35. The following issues are to be resolved in this Application:

- A. Does this Court have jurisdiction to appoint the Receiver over the Debtors?
- B. Can the proposed receivership progress alongside of the criminal proceedings?
- C. Is it just and convenient for the Court to appoint a Receiver over the Property?
- D. Are the terms of the proposed Appointment Order appropriate?

PART IV – ARGUMENT

A. This Court has Jurisdiction

36. Subsection 243(5) of the BIA specifies that an application under subsection 243(1) of the BIA is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

BIA, s. 243(5); Schedule B to this Factum

37. The term “locality of a debtor” is defined in section 2 of the BIA as follows:

“locality of a debtor” means the principal place

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated

BIA, s. 2, Schedule B to this Factum

38. The Debtors are Ontario corporations with registered head offices in Ontario. All of the business carried on by the Debtors that is relevant to Roynat's application to appoint a receiver occurs at the Commercial Property located in Scarborough, Ontario.

39. The locality of the Debtors is Ontario, and that this application is properly brought before the Ontario Superior Court of Justice.

B. The Proposed Receivership Can Progress Alongside the Criminal Proceedings

40. Nothing precludes a civil proceeding from progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter. Moreover, the *Criminal Code* explicitly permits parallel proceedings.

Criminal Code (Canada), RSC 1986, Chapter C 46, s. 11, Schedule B to this Factum.

41. The Real Property Restraint Order also contemplates Roynat's ability to enforce its rights under its security agreements:

“...[n]othing shall prohibit Roynat Inc. from enforcing any rights arising out of the terms and conditions of the mortgage registered at the Land Registry...”

Real Property Restraint Order, Exhibit D, para 17.

42. Furthermore, we understand that the SPMD and PPSC do not oppose Roynat's application, and a Prosecutor from the PPSC will be attending the Application Hearing on October 10, 2019 to address the Court directly.

C. It is Both Just and Convenient to Appoint a Receiver

43. Roynat seeks the appointment of a receiver pursuant to subsection 243(1) of the BIA and section 101 of the CJA. Subsection 243(1) of the BIA is clear that where it is “just or convenient” to do so, the court may appoint a receiver. Similarly, the CJA enables the court to appoint a receiver and manager where such appointment is “just or convenient”.

BIA, s. 243(1) and CJA, s. 101, Schedule B to this Factum

44. In *Bank of Nova Scotia v. Freure Village on Clair Creek*, Blair J. (as he then was) described the basic principles governing the judicial appointment of a receiver as follows:

The Court has the power to appoint a receiver or receiver and manager where it is “just or convenient” to do so [citation omitted]. In deciding whether or not to do so, it must have regard to all of the circumstances but in particular, the nature of the property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered, but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently [citations omitted]. It is not essential that the moving party, a secured creditor, establish that it will suffer irreparable harm if a receiver-manager is not appointed [citation omitted].

Bank of Nova Scotia v. Freure Village on Clair Creek, 1996 CarswellOnt 2328 (Ct J (Gen Div - Commercial List)) [“*Freure Village*”] at para. 11 [Book of Authorities, Tab 1]; *1529599 Ontario Ltd v. Dalcour Inc.*, 2012 ONSC 5707, 2012 CarswellOnt 12474 (Commercial List) [“*Dalcour*”] at para. 40 [Book of Authorities, Tab 2]

45. In the present case, having regard to all of the circumstances, it is both just and convenient for this Court to appoint a receiver over the Property for the following reasons:

- (a) The Debtors have been given ample opportunity, over a period of eight months since the last payment was made to Roynat, to sell the Commercial Property. Roynat has cooperated in an effort to facilitate an out of court resolution, against the backdrop of

serious criminal allegations, the RCMP Investigation and the Restraint Orders. However, after several failed attempts to sell the Commercial Property, despite repeated agreements to forbear from enforcement spanning over a period of six months, no sale has been accomplished. A Receiver must be appointed to accomplish what the Debtors can not;

Marsili Affidavit at para 58.

- (b) The appointment of the Receiver will facilitate a transparent, orderly and fair marketing and sale process for the Property, which presents the best chance of maximizing the value recovered from the balance of the Property in the interest of all of the Debtors' stakeholders, including the PPSC, SPMD, and the Crown;

Marsili Affidavit at paras 58, 59.

- (c) The Debtors are deeply indebted to Roynat. They have failed to repay the Indebtedness which has been in default for 8 months, and Events of Default continue to occur. After demand for repayment and the expiry of applicable notice periods, the Debtors are unable or unwilling to satisfy their financial obligations to the Roynat; and

See, for example, *Dalcor*, supra at para. 41 [Book of Authorities, Tab 2]; *Business Development Bank of Canada v. 2197333 Ontario Inc.*, 2012 ONSC 965, 2012 CarswellOnt 2062 (Commercial List) ["BDC"] at para. 21 [Book of Authorities, Tab 3] and the Marsili Affidavit at paras 41-56; BIA, ss. 243(1.1) and 244(1) [Schedule B to this Factum]

- (d) The documents pledging security in favour of Roynat include an express agreement from the applicable Debtor to the appointment of a receiver in these circumstances. For example, the Demand Debenture executed by the Borrower, and the Guarantor GSA state the following:

"Upon the happening of any Event of Default, the security granted herein shall become immediately enforceable and Roynat may at its option declare

this Debenture to be in default and may exercise any rights, powers or remedies available to Roynat at law or in equity or under the *Personal Property Security Act* or other applicable legislation and, in addition, may exercise one or more of the following rights, powers or remedies, which rights, powers and remedies are cumulative:

...

(g) to apply to any court of competent jurisdiction for the appointment of a receiver or receiver and manager for all or any portion of the Collateral ...”

BDC, *supra* at para. 21 [Book of Authorities, Tab 3]; *Dalcor*, *supra* at para. 40 [Book of Authorities, Tab 3]; *Freure Village*, *supra* at para. 13 [Book of Authorities, Tab 1]; *Textron Financial Canada Ltd v. Chetwynd Motels Ltd*, 2010 BCSC 477, 2010 CarswellBC 855 [“*Textron*”] at paras. 50 and 55 [Book of Authorities, Tab 4]

Marsili Affidavit at para 57; Section 8(g) of Exhibit G, and Section 7(g) of Exhibit K.

C. The Terms of the Application Order Sought are Appropriate

i. Scope of the Receivership

46. The only material asset of the Borrower is the Commercial Property. The Guarantor is not believed to have any material property. It is anticipated that once appointed, the Receiver’s only significant actions will be to market and sell the Commercial Property, and to seek an order of the Court vesting the Commercial Property in the purchaser and directing the Receiver to make distributions from the proceeds of sale.

47. At PPSC’s request, the Property to which the receivership would extend is limited to the assets, undertakings, properties, legal and beneficial ownership interests of the Debtors, but excludes the Debtor accounts subject to the Account Restraint Orders (the “**Excluded Accounts**”).

ii. Administrative Charge, Receiver's Borrowings Charge and Priority

48. Pursuant to subsection 243(6) of the BIA, if a receiver is appointed under subsection 243(1), the Court may make an order respecting the payment of fees and disbursements of the receiver, including one that gives the receiver a charge, ranking ahead of any secured creditors, over all or part of the Debtors' property, but only if this Court is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

BIA, s.243(6) Schedule B to this Factum

49. The proposed Appointment Order provides for an "**Administration Charge**" to secure the reasonable fees and disbursements of the Receiver and its counsel, in each case at their standard rates and charges, and a "**Receiver's Borrowings Charge**" (together with the Administration Charge, the "**Charges**") to secure monies borrowed by the Receiver from time to time for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Appointment Order, including its fees and disbursements, and the fees and disbursements of its counsel and any consultant or agent retained by the Receiver.

50. All known secured creditors of the Borrowers who are entitled to notice of Roynat's Notice of Sale, and the City of Toronto, have been served with notice of Roynat's application. The parties to the registered Cost Sharing Agreement and the judgment creditors who have filed the 2017 Writ and the 2019 Writ will not be materially affected by the Charges and have not been served. They will be notified of the appointment of the Receiver by the Receiver. In any event, other than Statutory super-priorities, Roynat's security over the Commercial Property appears to be in first priority, based on real property registrations.

PART V – CONCLUSION

51. For the reasons stated herein, it is both just and convenient to appoint Spergel as Receiver over the assets, undertaking and properties of the Debtors.

52. Accordingly, it is respectfully submitted that the relief requested by Roynat ought to be granted, and Spergel be appointed as Receiver over the Property, on the terms of the proposed Appointment Order.

PART VI – ORDER REQUESTED

53. Roynat respectfully seeks an order substantially in the forms attached as Tab 3 to its Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of October, 2019.



Chris Burr
Lawyers for the Applicant

SCHEDULE “A”
LIST OF AUTHORITIES

Cases

1. *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CarswellOnt 2328 (Ct J (Gen Div - Commercial List))
2. *1529599 Ontario Ltd v. Dalcour Inc*, 2012 ONSC 5707, 2012 CarswellOnt 12474 (Commercial List)
3. *Business Development Bank of Canada v. 2197333 Ontario Inc*, 2012 ONSC 965, 2012 CarswellOnt 2062 (Commercial List)
4. *Textron Financial Canada Ltd v. Chetwynd Motels Ltd*, 2010 BCSC 477, 2010 CarswellBC 855

SCHEDULE “B”
RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3: Section 2

Definitions

In this Act,

“*locality of a debtor*”

“locality of a debtor” means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

...

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3: Section 183

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) [Repealed, 2001, c. 4, s. 33]
- (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen’s Bench;
- (e) in the Province of Prince Edward Island, the Supreme Court of the Province;
- (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen’s Bench;
- (g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
- (h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

Superior Court jurisdiction in the Province of Quebec

(1.1) In the Province of Quebec, the Superior Court is invested with the jurisdiction that will enable it to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during its term, as it is now, or may be hereafter, held, and in vacation and in chambers.

Courts of appeal — common law provinces

(2) Subject to subsection (2.1), the courts of appeal throughout Canada, within their respective jurisdictions, are invested with power and jurisdiction at law and in equity, according to their ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the courts vested with original jurisdiction under this Act.

Court of Appeal of the Province of Quebec

(2.1) In the Province of Quebec, the Court of Appeal, within its jurisdiction, is invested with power and jurisdiction, according to its ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the Superior Court.

Supreme Court of Canada

(3) The Supreme Court of Canada has jurisdiction to hear and to decide according to its ordinary procedure any appeal so permitted and to award costs.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3: Section 243

Court may appoint receiver

- (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:
- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
 - (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
 - (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

- (1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1)

before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of “receiver”

- (2) Subject to subsections (3) and (4), in this Part, “receiver” means a person who
 - (a) is appointed under subsection (1); or
 - (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of “receiver” — subsection 248(2)

- (3) For the purposes of subsection 248(2), the definition “receiver” in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

- (4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

- (5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

- (6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of “disbursements”

- (7) In subsection (6), “disbursements” does not include payments made in the operation of a business of the insolvent person or bankrupt.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3: Section 244

Advance notice

- (1) A secured creditor who intends to enforce a security on all or substantially all of
- (a) the inventory,
 - (b) the accounts receivable, or
 - (c) the other property
- of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

- (2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

- (2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

- (3) This section does not apply, or ceases to apply, in respect of a secured creditor
- (a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
 - (b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

- (4) This section does not apply where there is a receiver in respect of the insolvent person.

Courts of Justice Act, R.S.O. 1990, c. C.43: Section 101

Injunctions and receivers

- (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

- (2) An order under subsection (1) may include such terms as are considered just.

Criminal Code (Canada), RSC 1986, Chapter C 46: s. 11

Civil remedy not suspended

11 No civil remedy for an act or omission is suspended or affected by reason that the act or omission is a criminal offence.

ROYNAT INC. - and - TAMTAN INC. and 1308963 ONTARIO LIMITED (o/a EZ FOOD GROUP)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**FACTUM OF THE APPLICANT
(Re: Appointment of a Receiver)
Returnable October 10, 2019**

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