

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
)
JUSTICE HAINEY)
) FRIDAY, THE 15th
) DAY OF MARCH, 2019

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

D.M. ROBICHAUD ASSOCIATES LTD.

Respondent

APPLICATION UNDER SUBSECTIONS 47(1) AND 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

**AMENDING ORDER
(Interim Receiver)**

THIS MOTION, made by BDO Canada Inc. (“**BDO**”), for, *inter alia*, an Order amending the Order of the Honourable Mr. Justice Hainej dated March 13, 2019 (“**IR Appointment Order**”) to expand the powers of BDO in its capacity and Interim Receiver of D.M. Robichaud Associates Ltd. (the “**Debtor**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the report of the Interim Receiver dated March 14, 2019 and the appendices thereto, and on hearing the submissions of counsel for BDO and Royal Bank of Canada, no one appearing for any other person on the service list, although served as appears from the affidavits of service of Pauline Leitgeb, sworn March 14, 2019, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the notice of application and the application record is hereby abridged and validated so that this application as it pertains to the appointment of the Interim Receiver is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that the IR Appointment Order be amended to add the following paragraphs:

3 (A) to pay such disbursements the Interim Receiver deems necessary in order to preserve the value of the Property of the Debtor from funds coming into its hands;

19 (A) **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Interim Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver’s Charge and

(a) any purchase money security interest, as that term is defined in the *Personal Property Security Act*, R.S.O. 1990, c. P.10, held by parties other than RBC and ranking in priority to RBC’s general security interest; and

(b) subsections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

19 (B) **THIS COURT ORDERS** that neither the Interim Receiver’s Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

19(C) **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule “A”** hereto (the **“Interim Receiver’s Certificates”**) for any amount borrowed by it pursuant to this Order.

19 (D) **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver’s Certificates.

3. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

4. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days’ notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



SCHEDULE "A"
INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. ____
AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that BDO Canada Limited, the interim receiver (the "IR") of the assets, undertakings and properties of D.M. Robichaud Associated Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 13th day of March, 2019 (the "Order") made in an action having Court file number CV-19-615922-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ____ day of each month] after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2019.

BDO CANADA LIMITED., solely in its capacity
as Interim Receiver of D.M. Robichaud Associates
Ltd., and not in its corporate or personal capacity
Per: _____

Name:

Title:

ROYAL BANK OF CANADA

and

D.M. ROBICHAUD ASSOCIATES LTD.

Applicant

Respondent

Court File No. CV-19-615922-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO**

AMENDING ORDER

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