

Clerk's Stamp

COURT FILE NUMBER  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT ROYAL BANK OF CANADA  
RESPONDENTS MGT MANAGEMENT INC.,  
MGT AGGREGATE PRODUCTS INC.  
and  
MICHAEL TOMLINSON

DOCUMENT **ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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**NOTICE TO RESPONDENTS: MGT MANAGEMENT INC.,  
MGT AGGREGATE PRODUCTS INC. and  
MICHAEL TOMLINSON**

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: **December 2, 2022**  
 Time: **2:00PM**  
 Where: **Calgary Courts Centre**  
 Before Whom: **The Honourable Justice Hollins**

Go to the end of this document to see what else you can do and when you must do it.

**Relief claimed or sought:**

1. The Applicant, Royal Bank of Canada (“**RBC**” or the “**Bank**”), seeks:
  - (a) An order substantially in the form attached as Schedule “A”:
    - (i) abridging, if necessary, the time for service of this application and deeming service good and sufficient;
    - (ii) appointing BDO Canada Limited (“**BDO**”) as receiver and manager, or in the alternative, as receiver, over certain of the assets, undertakings and property (the “**Property**”) of the respondents, MGT Management Inc. (“**MGT Management**”) and MGT Aggregate Products Inc. (“**MGT Aggregate**”) together with MGT Management collectively referred to as the “**Borrowers**”) by way of an order substantially in the form of the Receivership Order attached as Schedule “A” hereto (the “**Receivership Order**”), which appointment shall be effective immediately upon the filing of a Receiver Certificate attached as Schedule “A” to the Receivership Order.
  - (b) A consent order granting judgment in favour of the Applicant attached as Schedule “B” hereto in the amount of \$1,169,890.16 inclusive of per diem interest of \$218.65 calculated from March 3, 2022 to the date the consent order is sought to be pronounced and all fees, costs, expenses, legal fees and professional fees (the “**Consent Judgment for the MGT Management Personal Guarantees**”) as against Michael Tomlinson (the “**Personal Guarantor**”).
  - (c) A consent order granting judgment in favour of the Applicant attached as Schedule “C” hereto in the amount of \$255,139.30 inclusive of per diem interest of \$36.09 calculated from March 3, 2022 to the date the consent order is sought to be pronounced and all fees, costs, expenses, legal fees and professional fees as against the Personal Guarantor (the “**Consent Judgment for the MGT Aggregate Personal Guarantees**”) and collectively with the Consent Judgment

for the MGT Management Personal Guarantees, the “**Consent Judgments**”).

2. awarding costs of this application to the applicant, Royal Bank of Canada, on an appropriate scale; and
3. such further and other relief as counsel may advise and this Honourable Court deems just.

**Grounds for making this application:**

I. Parties

4. MGT Management is an Ontario corporation extra-provincially registered in Alberta.
5. MGT Aggregate is an Alberta corporation. MGT Management and MGT Aggregate operate a limestone quarry in Clearwater, Alberta.
6. A corporate search indicates that Michael Tomlinson, the Personal Guarantor, is the sole director and shareholder of MGT Management and MGT Aggregate. MGT Management, MGT Aggregate and the Personal Guarantor are hereby collectively referred to as the “**Debtors**”.

II. MGT Management Loan and Security Agreements

7. By a loan agreement and amendment dated July 2, 2021, and August 10, 2021, respectively, between RBC and MGT Management, which were confirmed, accepted and agreed to by MGT Management (collectively, the “**MGT Management Loan Agreement**”), RBC agreed to advance funds to MGT Management and did advance funds by way of a revolving demand facility (the “**MGT Management Demand Facility**”) on the terms and conditions set out in the MGT Management Loan Agreement, particulars of which include, among others:
  - (a) MGT Management shall provide as security for the borrowing and all other obligations of MGT Management to RBC, among others
    - (i) a general security agreement executed by MGT Management providing a first ranking security interest in all personal property of MGT Management;
    - (ii) the MGT Management Personal Guarantees and the MGT Corporate Guarantee as defined within; and

- (iii) a security agreement (chattel mortgage) executed by MGT Management providing a first ranking security interest in nine specific personal properties of MGT Management (collectively, the “**MGT Management Security Agreements**”);
  - (b) an event of default occurs upon failure of MGT Management to pay any principal, interest or other amount when due and failure of MGT Management, or any guarantor, to observe any covenant, condition or provision of the MGT Management Loan Agreement among others;
  - (c) Upon an event of default, RBC shall in its sole discretion demand immediate repayment in full of any amounts outstanding, together with accrued interest and any other indebtedness; and
  - (d) MGT Management shall pay all fees (including legal fees), costs and expenses incurred by the Bank in connection with the administration, operation, termination, enforcement or protection of its rights in connection with the MGT Management Loan Agreement and any security granted thereunder.
8. All sums payable to RBC by MGT Management pursuant to the MGT Management Loan Agreement are herein collectively referred to as the “**MGT Management Indebtedness**”.

### III. MGT Aggregate Loan and Security Agreements

9. By amended and restated loan agreement dated July 2, 2021 between RBC and MGT Aggregate, which was confirmed, accepted and agreed to by MGT Aggregate (the “**MGT Aggregate Loan Agreement**” and together with the MGT Management Loan Agreement, the “**Loan Agreement**”), RBC agreed to extend and did extend various credit facilities to MGT Aggregate, on the terms and conditions set out in the MGT Aggregate Loan Agreement, particulars of which include, among others:
- (a) MGT Aggregate shall provide as security for the borrowing and all other obligations of MGT Aggregate to RBC, among others:
    - (i) a general security agreement executed by MGT Aggregate providing a first ranking security interest in all personal property of MGT Aggregate to RBC;
    - (ii) the MGT Aggregate Personal Guarantees and the MGT Corporate Guarantee as defined within; and
    - (iii) a general security agreement executed by MGT Management providing a first ranking security interest in all personal property of MGT

Management to RBC (collectively, the “**MGT Aggregate Security Agreement**” and together with the MGT Management Security Agreement, the “**Security Agreements**” );

- (b) an event of default occurs upon failure of MGT Aggregate to pay any principal, interest or other amount when due and failure of MGT Aggregate, or any guarantor, to observe any covenant, condition or provision of the MGT Aggregate Loan Agreement among others;
  - (c) Upon an event of default, RBC shall in its sole discretion, demand immediate repayment in full of any amounts outstanding, together with accrued interest and any other indebtedness; and
  - (d) MGT Aggregate shall pay all fees (including legal fees), costs and expenses incurred by the Bank in connection with the administration, operation, termination, enforcement or protection of its rights in connection with the MGT Aggregate Loan Agreement and any security granted thereunder.
10. All sums payable to RBC by MGT Aggregate pursuant to the MGT Aggregate Loan Agreement are herein collectively referred to as the “**MGT Aggregate Indebtedness**”.

#### IV. Indebtedness

- 11. As of October 14, 2022, MGT Management is indebted to RBC in the amount of \$971,697.77, for outstanding principal and interests owing on the MGT Management Loan Agreement, not including amounts owing under the MGT Aggregate Corporate Guarantee, and exclusive of legal fees, costs and enforcement expenses.
- 12. As of October 14, 2022, MGT Aggregate is indebted to RBC in the amount of \$177,316.93 for outstanding principal and interests owing on the MGT Aggregate Loan, not including amounts owing under the MGT Management Corporate Guarantee, and exclusive of legal fees, costs and enforcement expenses.
- 13. All sums payable to RBC by the Debtors, including but not limited to the MGT Management Indebtedness and the MGT Aggregate Indebtedness, as set out above are hereinafter collectively referred to as the “**Indebtedness**”.

#### V. Events of Default and Demand of MGT Management and MGT Aggregate

- 14. On or before March 4, 2022, the Debtors committed events of default under the Loan and Security Agreements, including but not limited to by failing to pay all sums of money when

due and borrowing in excess of the credit facilities provided by the Loan and Security Agreements (the “**Specified Defaults**”).

15. Under the terms of each of the Loan Agreements, an event of default that occurs under one Loan Agreement, also triggers a cross-default under the other Loan Agreement.
16. Under the terms of each of the Loan Agreements, upon the occurrence of any event of default, the Bank is entitled to exercise various remedies, one of which is the appointment of a receiver or a receiver manager.
17. On or about March 4, 2022, RBC, made demand of the Debtors in accordance with the terms of the Loan and Security Agreements, for payment of all debts and liabilities owing by MGT Management and MGT Aggregate to the Bank as at March 4, 2022, plus interest, costs, fees, and expenses accruing thereon from and after March 4, 2022 (the “**Demands**”). RBC also delivered Notices of Intention to Enforce Security to each of the Borrowers pursuant to section 244 of the Bankruptcy and Insolvency Act (the “**Notices**”).
18. The Debtors failed to make payment of the indebtedness to RBC in response to the Demands made on or about March 4, 2022.

#### VI. Forbearance Agreement

19. To permit the Debtors to repay the indebtedness for all amounts owing to RBC as specified in the Demands and thereafter, RBC entered into a forbearance agreement with the Debtors dated April 11, 2022, which was subsequently amended by amending agreements dated July 6, 2022, July 13, 2022 and July 27, 2022 (collectively, the “**Forbearance Agreement**”).
20. Terms of the Forbearance Agreement include, but are not limited to, the following:
  - (a) RBC agrees to forbear exercising any of its rights and remedies and shall not take any steps to enforce its rights and remedies against the Debtors until the earlier of September 30, 2022 (which date was originally July 15, 2022 and subsequently extended at the request of the Debtors) and the occurrence of a Termination Event (the “**Forbearance Period**”);
  - (b) A Termination Event includes, but is not limited, to the following:
    - (i) the occurrence or notice of any default or Event of Default under any of the Loan and Security Agreements, other than the Specified Default;
    - (ii) failure by any of the Debtors to perform or defaults under any of the Covenants of the Debtors set out in the Forbearance Agreement;

- (iii) the receipt by RBC of a demand letter, notice of seizure or requirement for payment from, or the initiation of any other type of collection or enforcement action against either of the Borrowers by any secured party, lien claimant, other encumbrancer, judgment creditor or a person asserting similar rights in any property, Canada Revenue Agency or any other federal or provincial governmental agency or body;
  - (iv) the purchase order issued by Edco Aggregates Ltd. to MGT Management Inc. being terminated or amended in any way without the prior written consent of the Bank (the “**Edco Purchase Order**”); or
  - (v) the Bank determining, in its sole and absolute discretion, that an adverse change has occurred in the financial or operational affairs of the Borrowers or the Personal Guarantor or the Bank determines that any collateral subject to the Bank’s security is in jeopardy.
- (c) Covenants of the Debtors include, but are not limited to, the following:
- (i) MGT Management and MGT Aggregate shall remit when due and in accordance with legal principles, the CRA Payables as defined in the Forbearance Agreement, which includes premiums payable in respect of employment insurance, Canada Pension Plan, income taxes with respect to employees and goods and services sales taxes among others; and
  - (ii) in each month during the Forbearance Period, MGT Management and MGT Aggregate shall within 5 business days at the end of each month, provide RBC with the CRA Disclosure as defined in the Forbearance Agreement evidencing all such remittances of the CRA Payables are made to the Canada Revenue Agency among others;
21. In consideration of the Bank’s forbearance, the Debtors waived all defences that they may have to any claims made by the Bank for repayment of the Indebtedness in addition, but not limited to the following:
- (a) The Borrowers consented to the appointment of a receiver and manager, or in the alternative, a receiver over all of their assets and undertakings upon the expiry or termination of the Forbearance Agreement in the form of a consent receivership order; and
  - (b) The Debtors consented to judgment for the Indebtedness and executed consent judgments to be held in trust by RBC’s counsel and only filed upon the expiry or termination of the Forbearance Period. Specifically, the Personal Guarantor executed consent judgments, which are the subject of this application, with respect

to the amounts owing by the Personal Guarantor under the MGT Management Personal Guarantees and the MGT Aggregate Personal Guarantees (collectively, the “**Personal Guarantees**”).

## VII. Previous and Continuing Termination Events

22. On July 13, 2022, the Bank gave notice to the Debtors that a Termination Event had occurred under the Forbearance Agreement with respect to the Debtor’s failure to make required filings with respect to Accrued CRA Payables (as defined in the Forbearance Agreement). At that time, the Bank provided the Debtors with the necessary steps to cure the Termination Event in question including that a payment of \$250,000 be made to the Bank not later than July 14, 2022.
23. On or about July 14, 2022, the Debtors made a payment of \$250,000 in trust (the “Trust Funds”) to their counsel that was intended to be released to the Bank in relation to the Indebtedness.
24. On July 20, 2022, the Bank discovered that the Source Deductions Liability (as defined by the Forbearance Agreement) of both MGT Management and MGT Aggregate was calculated at \$254,549.37.
25. On July 27, 2022, notwithstanding the above Termination Event, the Bank instructed counsel for the Debtors to release the Trust Funds back to the Debtors on conditions including, but not limited to, the following:
  - (a) The Borrowers make a permanent repayment of the Source Deductions Liability for both companies to Canada Revenue Agency (the “CRA”), inclusive of an additional payment of \$4,549.37 to the CRA, with evidence of same provided to the Bank within one business day; and
  - (b) The Borrowers make a payment for \$100,000 to RBC by no later than August 15, 2022.
26. On or about August 25, 2022 the Debtors made a payment of \$100,000 (the “**Payment**”) to the Bank in respect of the MGT Management Indebtedness. The Payment is the only payment that the debtors have made to the Bank in relation to the Indebtedness since the commencement of the Forbearance Agreement.
27. On September 26, 2022 the Debtors wrote to the Bank requesting that the Forbearance Agreement be extended beyond September 30, 2022.
28. On September 30, 2022 the Debtors failed to make further payment as required under the terms of the Forbearance Agreement.
29. On October 4, 2022 the Bank advised the Debtors that additional Termination Events had occurred and were continuing to occur under the terms of the Forbearance Agreement (the “**Default Letter**”), including but not limited to the failure to make a \$300,000 payment to



RBC and the failure to make ongoing payments to the Canada Revenue Agency for source deductions. RBC also confirmed by way of written correspondence to the Debtors that the Forbearance Period expired on September 30, 2022 in light of the additional Termination Events and would grant no further extensions.

30. Since the delivery of the Default Letter, the Bank and the Debtors have engaged in discussions regarding the repayment of the Indebtedness, but no resolution has been reached by the parties to date.
31. On October 11, 2022, RBC also received a demand from the Workers Compensation Board of Alberta (“WCB”) demanding the payment of \$33,890.50 on account of amounts owing by MGT Management to WCB (the “**WCB Demand**”).
32. RBC attempted to assist the Debtors to meet their obligations under the Forbearance Agreement; however, the Debtors have continually failed to satisfy their obligations.

#### VIII. The Guarantees

##### *Regarding MGT Management Indebtedness*

33. The Personal Guarantor granted two guarantees and postponements of claim dated April 10, 2015 and February 18, 2016 pursuant to which the Personal Guarantor guaranteed the payment to the Bank of all debts and liabilities of MGT Management in the amounts of \$897,375 and \$320,000 respectively, together with interest thereon from the date of demand for payment at a rate equal to RBC’s prime rate plus 5.00% (the “**MGT Management Personal Guarantees**”).
34. MGT Aggregate granted a guarantee and postponement of claim dated May 15, 2017 pursuant to which MGT Aggregate guaranteed the payment to the Bank of all debts and liabilities of MGT Management in the amount of \$1,725,000 together with interest thereon from the date of demand for payment at a rate equal to RBC’s prime rate plus 5.00% (the “**MGT Management Corporate Guarantee**”).

##### *Regarding MGT Aggregate Indebtedness*

35. The Personal Guarantor also granted two guarantees and postponements of claim dated February 18, 2016 and February 23, 2017, pursuant to which the Personal Guarantor guaranteed the payment to the Bank of all debts and liabilities of MGT Aggregate in the amounts of \$321,533 and \$350,000 respectively, together with interest thereon from the date of demand for payment at a rate equal to RBC’s prime rate plus 5.00% (the “**MGT Aggregate Personal Guarantees Guarantee**”).

36. MGT Management granted a guarantee and postponement of claim dated February 24, 2017 pursuant to which MGT Management guaranteed the payment to the Bank of all debts and liabilities of the MGT Aggregate in the amount of \$650,000 together with interest thereon from the date of demand for payment at a rate equal to RBC's prime rate plus 5.00% (the "**MGT Aggregate Corporate Guarantee**").
37. The Debtors failed to make full payment of amounts due and owing to RBC in response to the Demands made on or about March 4, 2022 and upon the expiration of the Forbearance Period on September 30, 2022.
38. The MGT Management Indebtedness and the MGT Aggregate Indebtedness remain outstanding under one or more of the MGT Management Guarantees and the MGT Aggregate Guarantees is a just debt, due and owing.

#### IX. Consent Judgment for the MGT Management Personal Guarantees

39. Pursuant to the Forbearance Agreement, with respect to the MGT Management Personal Guarantees, the Forbearance Period has expired as of September 30, 2022 following the occurrence of additional Termination Events. As a result, the Applicant is entitled to enter the Consent Judgment for the MGT Management Personal Guarantees that were executed by the Personal Guarantor as part of the Forbearance Agreement.
40. Since the Forbearance Agreement was entered into, the Debtors made payment for \$100,000 towards the MGT Management Indebtedness.
41. The Bank has incurred fees, costs, expenses, legal fees and professional fees in the amount of \$123,915.62 as at September 30, 2022 in relation to the MGT Management Indebtedness.
42. The Consent Judgment for the MGT Management Personal Guarantees ought to be granted in the amount of \$1,169,890.16 inclusive of payments made by the Debtors, per diem interest of \$218.65 calculated from March 3, 2022 to the date the consent order is sought or to be pronounced and all fees, costs, expenses, legal fees and professional fees as at the date of the consent order.

#### X. Consent Judgment for the MGT Aggregate Personal Guarantees

43. Pursuant to the Forbearance Agreement, with respect to the MGT Aggregate Personal Guarantees, the Forbearance Period has expired as of September 30, 2022 following the occurrence of additional Termination Events. As a result, the Applicant is entitled to enter the Consent Judgment for the MGT Aggregate Personal Guarantees that were executed by the Personal Guarantor as part of the Forbearance Agreement.

44. Since the Forbearance Agreement was entered into, no payments were made by the Debtors to the Applicant in relation to the MGT Aggregate Indebtedness.
45. The Bank has incurred fees, costs, expenses, legal fees and professional fees in the amount of \$24,585.56 as at September 30, 2022 in relation to the MGT Aggregate Indebtedness.
46. The Consent Judgment for the MGT Aggregate Personal Guarantees ought to be granted in the amount of \$255,139.30 inclusive of per diem interest of \$36.09 calculated from March 3, 2022 to the date the consent order is sought to be pronounced and all fees, costs, expenses, legal fees and professional fees as at the date of the consent order.

#### XI. The Appointment of a Receiver of MGT Management and MGT Aggregate

47. Pursuant to the MGT Management Loan Agreement and Security Agreements, the MGT Aggregate Loan and Security Agreements and the Forbearance Agreement, RBC is entitled to appoint a receiver upon the occurrence of and during the continuance of any default or termination event by the Debtors.
48. The appointment of a receiver of the Property of MGT Management and MGT Aggregate is appropriate to provide for an orderly disposition of the Property.
49. Pursuant to the Forbearance Agreement, MGT Management and MGT Aggregate executed a consent order to appoint a receiver attached as Schedule "A" to this Originating Application.
50. The Indebtedness remains unpaid.
51. MGT Management and MGT Aggregate are insolvent and incapable of repaying RBC.
52. The appointment of a receiver over the Property is just, equitable, convenient and necessary to preserve RBC's Security.
53. BDO has consented to act as interim receiver and receiver and manager over the Property.

#### **Affidavit or other evidence to be used in support of this application:**

54. The Affidavit of Natalia Naraine, sworn November 21, 2022;
55. The inherent jurisdiction of this Honourable Court; and
56. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

**Applicable Rules:**

57. Rules 1.2, 1.3, 1.4, 3.72, 6.3, 6.47, 6.9 11.27 and 13.5(2) of the *Alberta Rules of Court*; and
58. Such further and other rules as counsel may advise.

**Applicable Acts and regulations:**

59. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and particularly s. 243 thereof;
60. *Business Corporations Act*, RSA 2000, c B-9;
61. *Judicature Act*, RSA 2000, c J-2, as amended, and particularly s. 13(2) thereof;
62. *Personal Property Security Act*, RSA 2000, c P-7, as amended, and particularly s. 65(7) thereof; and
63. All of the foregoing legislation stated without limitation and such other rules, acts, and regulations as counsel may advise and that this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

64. None are anticipated.

**How the application is proposed to be heard or considered:**

65. Orally.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**Schedule "A"**

**Schedule "B"**

**Schedule “C”**