

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

MARA TECH AVIATION FUELS LTD.,  
MARA TECH AVIATION SERVICES LTD.  
MARA TECH AVIATION FUELS (THOMSON) LTD., and  
MARA TECH AVIATION FUELS (SUDBURY) LTD.

Respondents

**FACTUM OF BDO CANADA LIMITED IN ITS CAPACITY  
AS COURT APPOINTED RECEIVER**

**JULY 30, 2024**

**SIMPSONWIGLE LAW LLP**

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Burlington, ON L7P 0V1

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Lawyers for the Receiver/Moving Party,  
BDO Canada Limited

TO: **THE SERVICE LIST**

## INTRODUCTION

1. Pursuant to the Order of the Honourable Justice Lococo, dated August 4, 2016 (the “**Appointment Order**”), BDO Canada Limited was appointed as Receiver (in such capacities, the “**Receiver**”), without security, over the assets, undertakings and properties of Mara Tech Aviation Fuels Ltd., Mara Tech Aviation Services Ltd., Mara Tech Aviation Fuels (Thompson) Ltd., and Mara Tech Aviation Fuels (Sudbury) Ltd. (collectively “**Mara Tech**” or the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached as [Appendix “A”](#) to the Receiver’s Fifth Report.

2. The Receiver’s motion seeks an Order, *inter alia*:

- (a) approving the activities of the Receiver and its agents as outlined in this Fifth Report;
- (b) directing the Receiver relative to inclusion or exclusion of the unsecured claims of CRA which will directly impact amounts to be distributed to Mara Tech’s unsecured creditors;
- (c) authorizing the Receiver to make a final distribution to Mara Tech’s unsecured creditors, excluding Thompson, representing the balance of the net receipts of the receivership estate;
- (d) authorizing the Receiver to distribute any future HST refunds to Mara Tech’s unsecured creditors, excluding Thompson, if and when received;
- (e) approving the Receiver’s statement of receipts and disbursements as at July 15, 2024;

(f) approving the Receiver's fees and disbursements in the amount of \$417,546.30, inclusive of HST and disbursements plus estimated costs to complete, (previously estimated at \$5,650 on the assumption of no opposition), at its standard rates and charges, for services rendered as set out in the Receiver's invoice (including all estimates to complete) as detailed in this Fifth Report and the Affidavit of Chris Mazur;

(g) approving the fees and disbursements of the Receiver's independent legal counsel, SimpsonWigle LAW LLP, in the amount of \$160,972.67 inclusive of HST and disbursements and estimated costs to complete, (previously estimated at \$4,943.95 on the assumption of no opposition), of at its standard rates and charges, for services rendered as set out in their respective invoices (including all estimates to complete) as detailed in this Fifth Report and the Affidavit of Rosemary A. Fisher;

(h) declaring that the Receiver has duly and properly discharged its duties, responsibilities, and obligations as Receiver and, upon completion of the final distributions to Mara Tech's unsecured creditors, is hereby discharged and released from any and all further obligations as Receiver, or any claims which have been raised or could have been raised in these proceedings and any and all liability in respect of any act done or default made by the Receiver or any acts or omissions of the Receiver in respect of the receivership and its conduct as Receiver pursuant to its appointment.

## **APPLICABLE LAW**

### **Provable Claim**

#### **Issues: i. Standard of review**

#### **ii: Collateral attack on Court orders**

3. The receiver submits that the claims procedure order of Justice Ramsey comprehensively sets out the process to be followed by the claimant and the receiver.

4. The Receiver's Notice of Disallowance<sup>1</sup> provided the following reasons for same: The claim of John and Sheila Marandola pertains to an entity MARA TECH AVIATION FUELS (THOMSON) LTD, which is not a party to the Claims Procedure Order and had no operations or assets upon which the Receiver could realise. No Notice of Dispute of the Disallowance was filed as per the provisions of the Order. Thus, the Marandas are not creditors in the Receivership.

5. The Order itself is clear that unless such a Notice of Dispute is filed, said Disallowance is final and binding.

#### **Duty of Receiver to all Stakeholders**

6. It is well-established that a court appointed receiver is an officer of the court and acts in a fiduciary capacity with respect to all parties interested in the assets under the control of the receiver.<sup>2</sup>

#### **Receiver's Obligation to Provide Details of Work Performed**

7. The onus is on the receiver to prove that that compensation for which it seeks is fair and reasonable. The receiver should particularize its fees and those of its counsel in fee affidavits. The accounts must disclose in detail the name of each person who rendered services, the date the services were rendered, and the rate charged and total charges for the services.<sup>3</sup> It is submitted that the Receiver has done so.

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<sup>1</sup> Motion Record of the Receiver, Fifth Report of the Receiver dated July 15, 2024, [Appendix H \(Order\), Case Center pp. A130-A149](#) and [Appendix J \(Proof of Claim\), Case Center pp. A152-A161](#)

<sup>2</sup> [Manufacturers Life v. Juno Developments, 2011 ONSC 3945, para 39](#)

<sup>3</sup> [Confectionately Yours Inc. \(Re\), 2002 CanLII 45059 \(ON CA\), 36 CBR \(4<sup>th</sup>\) 200 para 31, 32](#)

8. The Initial Order provides that the Receiver and its counsel shall be paid their reasonable fees and disbursements, at their standard rates and charges and that the Receiver and its legal counsel shall pass their accounts from time to time before the Court.

9. "It is not necessary or desirable to engage in a review of each individual docket as per the Court of Appeal in *Confectionately* which set out a number of factors to be considered in a review of the fees and disbursements of a Court officer. These factors include:

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;
- (e) the Monitor's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner."<sup>4</sup>

### **Fair and Reasonable**

10. The Receiver dealt with many challenges from the Marandolas including vigorous opposition to most of the Receiver's motions: none of the challenges were successful. Many of these are referenced in its Fourth Report at Appendix E to the Fifth Report. The reality is

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<sup>4</sup>[Laurentian University of Sudbury, 2022 ONSC 5850 para. 12](#)

that the Receiver and its counsel produced extraordinary results. The equipment appraisal commissioned following the receivership provided a gross liquidation value of \$166,750 for equipment assets located at all 4 airport locations.<sup>5</sup> As detailed in prior reports, and the recent SRD, the Receiver generated recoveries in excess of \$1.8 million.<sup>6</sup> Long ago, Mr. De Lisio was permitted to review the equipment appraisal in Court to demonstrate the assets were being sold for far more than liquidation value.

11. Additionally, as detailed in paragraph 2.6 of the Fourth Report, following the sale of Mara Tech's assets, the Receiver actively engaged with CRA in order to quantify both priority and unsecured claim amounts relative to employee source deductions and GST/HST for each of the Mara Tech entities. The entities were delinquent in their filings. Thus certain of Mara Tech's tax accounts were subject to reassessment which had the potential to increase CRA's claims in excess of \$250,000. As a result of the Receiver's direct involvement, CRA's claims were crystalized without reassessment.

12. On April 18, 2019, John Marandola lodged a complaint with the Office of the Superintendent of Bankruptcy ("OSB") relative to the Receiver's administration of the receivership. Following its investigation, the complaint was dismissed by the OSB on the following basis:

- (1) given that the complainant's proof of claim was disallowed by the LIT/receiver the complainant appeared to have no standing in the matters; and

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<sup>5</sup> Motion Record of the Receiver, Fifth Report of the Receiver dated July 15, 2024, [Appendix E \(Fourth Report dated October 25, 2017\), Case Center pp. A84-A103](#) – see [Case Center page A91 for appraisal amount](#)

<sup>6</sup> Motion Record of the Receiver, Fifth Report of the Receiver dated July 15, 2024, [Appendix O \(Interim Statement of Receipts and Disbursements\), Case Center pp. A199-A200](#)

(2) based on the information available the LIT/receiver appeared to be operating within its authority.

13. This matter has been delayed as a consequence of, *inter alia*, the following: the Marandolas counsel had limited availability after the expiration of the Claims Bar Date and thereafter counsel from the Department of Justice with responsibility for this matter went on medical leave which ultimately became extended. This was followed by the Covid shut down in 2020. The Receiver made extensive attempts to attempt to resolve the extant issues and specifically to come to a consensus on the CRA claim with the Marandolas counsel notwithstanding the Receiver's view that they lacked standing. This was unsuccessful. The Receiver further attempted to resolve outstanding issues with the Marandolas' counsel in respect of the Marandolas' claim and claims for legal fees in respect of adjudicated motions being not provable. This was not successful. More recently, a key person with the Receiver's office was unavailable due to a significant medical procedure.

14. In March of 2023, as Mr. Marandola and his counsel well know, the accounts of the Receiver and its Counsel (as at that date) were shared with Mr. DeLisio, the Department of Justice and others. At that juncture, as Mr. DeLisio also well knows, the Receiver had not yet disallowed his Proof of Claim for legal fees rendered to the Marandolas for his work in opposing the Receivership itself and its almost every other step proposed by the Receiver. As such, Mr. DeLisio was still a potential unsecured creditor. Nothing was heard from Mr. DeLisio or his client consequent to same – until now.

15. The court is consistent in its approach to fee challenges in these circumstances:

In my view, it is not the role of the Court to attempt to undertake a lawyer by lawyer, line by line, forensic analysis of the invoices for professional fees. Nor is it the role of the Court to attempt to evaluate each docket entry and attempt to come to a determination,

particularly on a record like this, as to whether each individual activity on a certain day by a certain professional added demonstrable value.

Rather, the Court of Appeal was clear in *Diemer* that such an item-by-item evaluation is what should not be undertaken, in favour of a more holistic review of the constellation of all relevant factors, each of which is an input into the ultimate analysis of whether the fees are fair and reasonable in the circumstances of this particular case...

I am satisfied that while the receivership property consisted largely of one piece of land and the building thereon, it does not follow that the issues confronting the Receiver were necessarily straightforward or uncomplicated. As admitted and indeed emphasized by the Debtor, the value of the asset reflected its unique and single-purpose: operation of a cannabis facility. That in turn required a Health Canada licence which was not issued until later in the process.

The chronology of Court attendances and orders does not persuade me that any of them were improper, unnecessary or duplicative. Indeed, a number of them were brought about expressly at the request of the Debtor in the course of its continued and repeated pleas, effectively, for more time within which it could arrange replacement financing and pay out the mortgage debt owing to the Applicant.

In oral argument, counsel for the Debtor made three main submissions: i) the Receiver has duties to all stakeholders, including the Debtor; ii) the receivership proceeding itself was opposed by the Debtor and by the Second Mortgagees; and iii) the fees charged are unreasonable.

As stated above, neither of the first two submissions assists the Debtor at all, in my view. The only issue on this motion is whether the fees and disbursements are fair and reasonable.<sup>7</sup>

## **Standing and Prejudice**

16. The Respondents' insistence on the ability to challenge the accounts of the Receiver and its' counsel appears to be based on the concept of Marandola being an "interested party" as per the quote from Bennett on *Receiverships*. Interested party is not defined therein so what does it mean? Clearly Marandola has no economic interest, not being a proven claimant.

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<sup>7</sup> [Triple-I Capital Partners Limited v. 12411300 Canada Inc., 2023 ONSC 3400 paras 53, 54, 58-61](#)



Even if he argues his interest is as being protector of the debtors' shareholders, the fees in question, given the quantum of unsecured claims approaches \$300,000 if CRA's claim is admitted, would have to be reduced by an amount in excess of said quantum to produce anything for the shareholders.

17. Respectfully, Mr. Marandola has been a disruptor to this process throughout. To what end? The assets were sold for an amount far exceeding the appraised value. Providing full payment to the secured creditors and some recovery for the unsecured creditors was a result no one would have predicted at the outset.

18. Mr. Marandola's position only further prejudices the interest of the unsecured creditors with proven claims who will now recover both less and later because of the costly and time-consuming ongoing opposition of Mr. Marandola. Conversely, Mr. Marandola, if denied an opportunity to challenge the accounts, suffers no prejudice.

19. As in the Landau case referred to by the Respondents and specifically at para. 26 of same, the court has no substantive criticisms or concerns from the Respondents. As noted by Corbett J therein: "I have almost no factual record before me. That was a tactical and practical decision by the applicant - she preferred to find out if she would be permitted to proceed before incurring the expense and time to assemble her factual record.... so I decide this case on the record before me, which is close to nonexistent on the merits.

20. Further, the case law relied upon by the Respondents, and with all due respect, is simply generalities. If there is an inherent right as a representative of the debtor, same has not been clearly demonstrated by the Respondents. It is submitted that the question for the Court is this: what is the purpose of Marandola's challenge? The CRA represented by the Department of Justice, is the second largest unsecured creditor if its' claim is allowed. It has reviewed and accepts the fees claimed.

21. Assuming Mr. Marandola does not purport to usurp the Court's role in ensuring that the accounts are fair and reasonable again the question is, to what end?

22. It is respectfully submitted the work done was necessary, fair, reasonable and beneficial to the creditors of the debtor entities.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**



July 30, 2024

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Lawyers for the Receiver, BDO Canada  
Limited

## SCHEDULE “A”

### CASE LAW

1. [Manufacturers Life v. Juno Developments, 2011 ONSC 3945, para 39](#)
2. [Confectionately Yours Inc. \(Re\), 2002 CanLII 45059 \(ON CA\), 36 CBR \(4<sup>th</sup>\) 200 para 31, 32](#)
3. [Laurentian University of Sudbury, 2022 ONSC 5850 para. 12](#)
4. [Triple-I Capital Partners Limited v. 12411300 Canada Inc., 2023 ONSC 3400 paras 53, 54, 58-61](#)

**SCHEDULE "B"  
SERVICE LIST**

**ROYAL BANK OF CANADA V. MARA TECH AVIATION FUELS LTD. ET AL  
COURT FILE NO. 56184/15**

<p><b>Ministry of Finance</b> 103 Legislative Building, 450 Broadway Winnipeg, MB 43C 0V8</p> <p><b>Mr. Greg Dewar</b> Tel: (204) 945-3952 Fax: (204) 945-6057 Email: <a href="mailto:minfin@leg.gov.mb.ca">minfin@leg.gov.mb.ca</a></p>	<p><b>HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE</b> Insolvency Unit 33 King St. W., 6<sup>th</sup> Floor Oshawa, ON L1H 1A1</p> <p>Email: <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a></p>
<p><b>Wage Earner Protection Program (WEPP)</b> <b>Labour Program - Department of Human Resources and Skills Development Canada</b> <b>c/o Manager WEPP</b> 10th Floor, Phase II 165 Rue de l'Hôtel-de-Ville Gatineau, QC J8X 4C2</p> <p>Fax: (819) 994-5335 Email: <a href="mailto:NC-WEPP_SERVED-PPS_SIGNIFIER-GD@labour-travail.gc.ca">NC-WEPP_SERVED-PPS_SIGNIFIER-GD@labour-travail.gc.ca</a></p>	<p><b>Department of Justice Canada (for Canada Revenue Agency)</b> Ontario Regional Office National Litigation Sector 120 Adelaide Street West Suite 400 Toronto, ON M5H 1T1</p> <p><b>Kelly Smith Wayland, Senior Counsel</b> Tel: (647) 533-7183 Fax: (416) 973-0810 Email: <a href="mailto:kelly.smithwayland@justice.gc.ca">kelly.smithwayland@justice.gc.ca</a></p>
<p><b>Marandola Holdings Ltd.</b> 412 Wright Crescent Niagara-on-the-Lake, ON L0S 1J0</p> <p><b>% Mr. John Marandola, Officer/Director</b></p> <p>Email: <a href="mailto:jmarandola@maratech.org">jmarandola@maratech.org</a></p>	<p><b>Legal Services Branch</b> <b>Office of the Public Guardian and Trustee</b> 595 Bay Street Suite 800 Toronto, ON M5G 2M6</p> <p>Attention: Lizzeth Jimenez Email: <a href="mailto:lizzeth.jimenez@ontario.ca">lizzeth.jimenez@ontario.ca</a> and <a href="mailto:PGT-Legal-Documents@ontario.ca">PGT-Legal-Documents@ontario.ca</a></p> <p>Tel.: (416) 314-2692 Fax: (416) 314-2695 Toll-free: 1-800-366-0335</p>
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PROCEEDINGS COMMENCED AT  
ST. CATHARINES

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