IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Royal Bank of Canada v West Horizon Contracting Inc.,* 2026 BCSC 1757

Date: 20260825
Docket: S264776
Registry: Vancouver

Between:

Royal Bank of Canada

Petitioner

And

West Horizon Contracting Inc.

Respondent

Before: The Honourable Mr. Justice Coval

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:	W. Skelly M. Tomos
Counsel for the Respondent:	A. Spraggs C. Elliott
Counsel for the Attendee, The Insurance Company of Prince Edward Island:	D. Laudan A. Aparicio
Counsel for the Attendee, BDC Capital:	D.B. Hyndman
Counsel for the Attendee, Western Surety Company:	N. Konstantinov
Place and Date of Hearing:	Vancouver, B.C. August 20, 2026
Place and Date of Judgment:	Vancouver, B.C. August 25, 2026

Introduction

[1] **THE COURT:** RBC applies to appoint a receiver-manager over the operations and assets of WHC.

[2] Under the terms of its credit agreement with RBC, WHC owes approximately $4 million, plus accruing interest, pursuant to RBC's demand for repayment on May 7, 2026.

[3] RBC's main points in support of the receivership are that:

i. WHC has repaid nothing towards its debt for approximately four months, despite receiving payments of $1.4 million from customers in July.

ii. WHC's account is overdrawn by almost $600,000 over approved limits.

iii. In May, RBC advanced an additional $500,000 as an emergency accommodation for WHC, which WHC failed to repay and for which it failed to arrange the promised security.

iv. RBC has little visibility into WHC's actual and projected revenues.

v. WHC's proposed refinancing has not materialized despite repeated representations that it was imminent.

[4] WHC counters that RBC was unreasonably hasty in calling the demand loan, since WHC was up to date in its repayments, and it is the demand and these proceedings which have caused most of its current difficulties, including undermining a potential refinancing.

[5] It submits that the receiver's appointment at this crucial point in the performance of key contracts will be devastating to its business and prejudicial to other stakeholders, and there is good reason to expect RBC to be paid in full in approximately six months.

[6] In support of the prospects of repayment, WHC points to (in round numbers):

i. $3.5 million of accounts receivable, mainly with the provincial Ministry of Transportation and Infrastructure (“MOTI”), including holdbacks of $1.1 million;

ii. $6 million of completed work awaiting approval before billing. This includes $3.35 million for overage claims which WHC expects to be resolved in 2026;

iii. $9.6 million of projected gross revenue for work in the balance of 2026; and

iv. $4.25 million of potential financing from Provida Financial, though with approved limits the actual advances might be closer to $2 million.

[7] Finally, WHC points to the prejudice in its major works contracts with MOTI from the appointment of a receiver. This would be an event of default, giving the Ministry not only the rights to suspend or terminate its contracts but also broad rights to retain any payments due but unpaid including holdbacks (General Terms of Contract 62.01, 62.02(b), and 62.03).

[8] WHC's bonding company, the Insurance Corporation of Prince Edward Island, supports WHC's opposition to the receiver. It submits that MOTI will almost certainly demand completion of the contractual work under its performance bond rather than work with WHC's receiver. Counsel for ICPEI goes so far as to say he has never seen a receivership such as this unfold otherwise. ICPEI therefore submits that it is uncertain if receivership would achieve any material amounts for RBC or other secured creditors.

[9] In my view, the overall balancing of potential benefits and harms does not justify a receiver appointment at this stage, though that may change as matters progress.

[10] RBC's application is therefore adjourned with leave to bring it back on for hearing. As a condition of the adjournment, certain payment and disclosure obligations are imposed on WHC.

Background Facts

[11] WHC is a construction company, specializing as a general contractor in road and bridge construction and maintenance in northern BC. Its clients include MOTI, municipalities, and Indigenous governments.

[12] Pursuant to the Credit Agreement, RBC provided WHC with a revolving demand facility up to $3 million and a credit card facility up to $200,000.

[13] The Credit Agreement provides, among other things, that:

a) the RBC Demand Facility is a demand margin facility, repayable on demand (Credit Agreement and Standard Terms, p 1); and

b) Events of Default include where:

- in RBC's opinion, there is a material adverse change in the financial condition of WHC (Standard Terms p 6); and

- WHC fails to observe any covenant, term, condition or provision contained in the Credit Agreement or any other agreement delivered to RBC or in any related documentation (Standard Terms p 4).

[14] WHC granted RBC a general security agreement, and WHC's principals executed a series of guarantees, postponements, and assignments of claims.

[15] As of March 2026, WHC had working capital shortages, exceeding the RBC Demand Facility limit by as much as $100,000. As a result, RBC began to automatically return cheques and payments NSF.

[16] Also in March 2026, RBC learned that WHC's working capital shortages arose in part from a $4.5 million cost overrun on a project called Fisher Creek Bridge. In RBC's view, WHC accounting for this overrun in “earnings in excess of billings” created an overstatement of its reported net income. WHC disputes this characterization and submits this work is not a cost overrun but more akin to good accounts receivable. It says the amounts represent additional work completed on Fisher Creek, but which is not yet invoiced because, under the MOTI contracts, extras cannot be billed until MOTI has approved them.

[17] On April 20, 2026, RBC transferred WHC's file to its Special Loans & Advisory Services group. Although WHC had not missed its scheduled payments, RBC's internal assessment was that the cost overrun was a material adverse change in its financial condition and operations.

[18] On May 7, 2026, RBC met with WHC and WHC's financial advisor MNP. MNP's analysis showed a borrowing margin shortfall of almost $2 million as of April 2026. WHC asked RBC to forbear from enforcing its rights and, on an urgent basis, to temporarily increase the RBC Demand Facility by $500,000 for approximately six weeks, to fund operations while pursuing a longer-term solution.

[19] On the same day, RBC issued demand letters and Notices of Intention to Enforce Security to WHC and its guarantors.

[20] By a forbearance letter of May 11, 2026, RBC agreed to temporarily increase the Demand Facility by $500,000 until June 26, 2026. In exchange, WHC was to provide additional security of first-ranking mortgages over two properties referred to as Tatlow and Seeley Lake.

[21] At the time, RBC understood that WHC did not have consent to the Tatlow mortgage from the other owner of Tatlow, and that it needed to discharge a first mortgage on Seeley. Ordinarily, RBC would have required these steps and its security in place before advancing the additional funds, but it made an exception due to WHC's urgent need for the money.

[22] In the end, the Tatlow mortgage was not granted, the first mortgage on Seeley did not come off title, and WHC has not repaid the $500,000 which had a due date of June 26, 2026.

[23] For the past few months, WHC has told RBC that refinancing is imminent with the National Bank of Canada, but WHC now says that the Bank withdrew after learning of these proceedings. WHC has therefore sought refinancing from Provida and put in evidence an unsigned commitment letter.

[24] WHC is working with ICPEI to ensure its bonded contracts are completed in an orderly manner. ICPEI has engaged an experienced construction consultant, JSL Construction, to assist WHC in the face of the financial challenges from these proceedings and the freezing of its RBC credit.

Governing Law

[25] Jurisdiction to appoint a receiver is found in *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 243(1); *Law and Equity Act*, RSBC 1996, c 253, s 39(1); and Supreme Court Civil Rule 10-21. The overall question is whether the appointment of a receiver is "just or convenient" in the circumstances.

[26] RBC has the onus to establish that a receiver should be appointed. The court must include consideration of other stakeholders, such as employees, customers, and other creditors.

[27] Where, as here, a secured creditor has a contractual right to the receiver's appointment, receivership is not treated as an extraordinary remedy. But given the typically severe costs and consequences, it should be granted cautiously and other less drastic remedies should be considered.

[28] The well-established *Maple Trade* [*Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 152] factors are non-exhaustive list of relevant considerations.

Analysis

[29] In my view, the *Maple Trade* factors apply as follows:

a) Whether <u>irreparable harm</u> might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation.

WHC is in default of its obligations under the Credit Facility and Forbearance Agreement. It has not repaid its debt after demand or the $500,000 emergency loan or provided the Tatlow mortgage or discharged the first mortgage on the Seeley Lake property.

WHC has paid nothing to RBC since April 21, and without a receivership, RBC continues to bear the risk of nonpayment without visibility into WHC's financial position.

However, I see the risk of irreparable harm to RBC as reduced by WHC's projected income over the next few months, and I accept WHC and ICPEI's submission of significant risk of irreparable harm to all parties, including RBC, by receivership seriously prejudicing WHC's ongoing work with MOTI.

In my view, it is unclear whether MOTI's entitlement to withhold payment would be stayed by the standard “No Exercise of Rights or Remedies” clause in the receivership order, given that MOTI's right is simply to retain certain funds including current holdbacks. Moreover, once the receivership is granted, it may well not be just or equitable to impose the stay over some or all of the MOTI's contractual rights and remedies.

b) The <u>risk to the security holder</u>, taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place.

As mentioned, without a receivership, RBC continues to bear the risk of nonpayment without visibility into WHC's financial position.

Also as mentioned, however, I accept WHC and ICPEI's submission that receivership poses a serious risk to all creditors.

I also accept there is evidence of a strong possibility of WHC being able to weather its current difficulties if a receiver is not appointed. It is an experienced operator backed by an experienced bonding company. It is performing the work on its key contracts. It is working with ICPEI to ensure the bonded contracts are completed in an orderly manner. ICPEI has engaged an experienced construction consultant, JSL, to assist completion in the face of its financial challenges.

c) The <u>nature of the property</u>; d) the apprehended or actual <u>waste of the debtor’s assets</u>; e) the <u>preservation and protection of the property</u> pending judicial resolution.

It is concerning that WHC received around $1.5 million of revenue in July but paid nothing to RBC.

On the other hand, WHC's assets include active construction contracts and projects that require ongoing oversight, reliable and current financial information, and coordinated management to preserve their value.

There is no evidence of the proposed receiver's experience or plan for carrying out these highly specialized contracts at this crucial and challenging time for WHC.

f) The <u>balance of convenience</u> (i.e. balancing of potential benefits and harms).

Absent a receivership, RBC will continue to bear the risks of WHC's ongoing operations and nonpayment.

However, the appointment poses a real risk of irreparable harm to WHC. It does so by harming its ability to carry on with its contracts and by putting at risk payment of its substantial accounts receivable, holdbacks, and unbilled overages, and its ability to continue with these complex, time-sensitive contracts.

Receivership also poses associated risks of irreparable harm to ICPEI, the First Nations groups who provide subcontracting to WHC, WHC's employees, and the guarantors.

g) The creditor’s right to appoint a receiver under the documentation provided for the loan.

RBC has this contractual right, which counts in favour of the appointment and means it should not be treated as an exceptional remedy.

h) The enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others.

I do not see this factor as particularly weighty in these circumstances.

i) The principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly.

The extraordinary nature is significantly reduced when dealing with a secured creditor who has the contractual right to a receivership, such as RBC in this case.

j) The consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently.

I do not see this consideration as particularly weighty.

k) The effect of the order upon the parties.

See h) above.

l) The conduct of the parties.

While RBC's demand for payment might have been aggressive, overall it has endeavoured to assist and accommodate WHC by providing reasonable time and additional loans while it addressed its financial difficulties.

WHC has been trying to refinance and is working with ICPEI to continue performing under its contracts. Counting against WHC is its failure to provide the promised additional security, repayment of the emergency loan and repayment of any amounts in July.

m) The length of time that a receiver may be in place.

This is unpredictable and not a weighty factor in these circumstances.

n) The cost to the parties.

Receivership would be costly to WHC.

o) The likelihood of maximizing return to the parties.

Without a receiver, the next few months appear to be make or break for WHC.

If things unfold well, it appears that the net revenues plus some refinancing will allow WHC to repay RBC and carry on business. If they unfold poorly, a receiver may become necessary to preserve WHC's assets, obtain reliable financial and operational information, deal with counterparties, and conduct an orderly realization process.

Conclusion

[30] RBC's application to appoint a receiver is adjourned. RBC may set the application back down for hearing on reasonable notice. I will be seized of any such application if available to hear it.

[31] As the condition of granting this adjournment, WHC is to:

a) make reasonable best efforts to pay the monthly interest due to RBC going forward and to reduce its arrears of interest; and

(And here I will just note, this is not part of the order, but I note that I did not hear submissions on the interest amounts outstanding or WHC's ability to repay that, and so I have left this obligation as reasonable best efforts.)

b) provide RBC with monthly financial disclosure, including gross and net revenues, AR and WIP, and any other financial information reasonably requested by RBC.

[32] Anything arising, please? Any questions or clarifications? All right. Well, thank you all very much. We will adjourn there.

"Coval J."