

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

and

**MARA TECH AVIATION FUELS LTD.,
MARA-TECH AVIATION SERVICES LTD.,
MARA TECH AVIATION FUELS (THOMPSON) LTD., and
MARA TECH AVIATION FUELS (SUDBURY) LTD.**

Respondents

FACTUM

of BDO Canada Limited, Receiver of Mara Tech Aviation Fuels Ltd. et al

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PART I – OVERVIEW

Background and Facts

1. On August 4, 2016, and pursuant to section 243(1) of the Bankruptcy and Insolvency Act and section 101 of the Courts of Justice Act, by way of the Order of the Honourable Mr. Justice Lococo, BDO Canada Limited (“**BDO**”) was appointed as Receiver (in such capacities, the “**Receiver**”) without security, of all of 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**”).
2. Mara Tech provides fueling and ground support services to various airlines. Airlines serviced by Mara Tech include Air Canada/Jazz, Porter Airlines, SunWing Airlines, and Bearskin Airlines. Other customers are private aircrafts and charters,

including: Canada Post, Ministry of Natural Resources, and the Canadian Department of National Defense. At present, Mara Tech maintains fixed base operations at public airports located in Sault Ste. Marie, Sudbury, North Bay, and Windsor. Mara Tech has approximately 95 employees (the “**Services**”).

3. Due to the nature of Mara Tech’s business, the Receiver has not operated Mara Tech’s business or take possession or control of the Property and Mara Tech continues to operate its business. The Receiver has attempted to monitor the financial circumstances of Mara Tech by requesting relevant and material financial information from Mara Tech.

Outstanding Liabilities of Mara Tech

4. Mara Tech has failed to provide all of the information and documentation requested from it by the Receiver and accordingly the Receiver has been unable to determine with certainty the current financial position, cash flow from operations, or financial viability of Mara Tech but based upon known information, the Receiver is concerned regarding Mara Tech’s ability to fund its current obligations or otherwise continue operating given cash flow constraints and increasing creditor exposure.

5. The following amounts are owed by Mara Tech to its secured creditors inclusive of professional costs incurred by Royal Bank of Canada (“**RBC**”) as of the following stipulated dates:

Royal Bank of Canada – December 1, 2016 - \$617,320.48

LAKES Leasing – December 5, 2016 - \$78,081.15

Kubota Canada – December 5, 2016 - \$62,677.54

6. As at December 5, 2016, Mara Tech is indebted to Canada Revenue Agency for source deductions in the amount of \$154,071.06 and is indebted with respect to GST/HST in the amount of \$40,912.34.

7. Mara Tech is in arrears of rent with respect to Windsor Airport in the amount of \$13,503.64 as at October 31, 2016.

8. For the period ended November 30, 2016, the Receiver has incurred fees and disbursements of \$124,351.19, inclusive of HST and the same have continued to accrue.

9. For the period ended November 30, 2016, the Receiver's counsel, SimpsonWigle LAW LLP has incurred fees and disbursements of \$37,717.30 inclusive of HST and the same have continued to accrue.

10. The Receiver is concerned that Mara Tech does not have the ability to fund its current obligations or otherwise continue operating given cash flow constraints and creditor exposure is increasing.

11. Pursuant to the Order of the Honourable Justice Lococo dated August 4, 2016, the Receiver has been granted the power to, *inter alia*, market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.

The Receiver has obtained a liquidation value of the appraisal of the equipment of Mara Tech from Canam Appraiz Inc. dated August 16, 2016.

Agreement of Purchase and Sale

12. Further to the marketing process, the Receiver has entered into an Agreement of Purchase and Sale (the "**APS**") with Executive Aviation Fuels Ltd. to purchase the Purchased Assets on a going concern basis.

13. The Agreement of Purchase and Sale provides a selling price and proceeds of realization from the Property that is substantially greater than the liquidation value of Mara Tech's equipment.

14. Executive Aviation Fuels Ltd. intends to retain all or substantially all of Mara Tech's existing employees.

15. The Agreement of Purchase and Sale between the Receiver and Executive Aviation Fuels Ltd. is conditional upon, among other things, Court approval.

16. The allocation of the purchase price in the APS with respect to the property of Mara Tech located at the Windsor Airport (although not expressly set out in the APS) is relatively small as compared to the other three airports.

17. There is potential that the APS be amended to exclude from the Purchased Assets the property of Mara Tech that is located at the Windsor Airport.

18. Regardless whether the property located at the Windsor Airport is excluded from the APS, The Receiver believes that the Agreement of Purchase and Sale with Executive Aviation Fuels Ltd. dated November 4, 2016 is fair value for the Purchased Assets and provides the greatest recovery for the Purchased Assets and the Receiver believes that the completion of the APS is in the best interest of the Debtors and all of the Debtors' creditors and other stakeholders.

Termination of the Receivership

19. The principals of Mara Tech wish to terminate the receivership based upon, among other things, the principals refinancing and redeeming the secured debt of RBC and in that regard, have obtained an offer of finance from Baron Financial which has a real estate segment and a segment which is factored against the outstanding receivables of Mara Tech which financing provides for a maximum advance of \$812,000.00.

20. The APS with Executive Aviation does not include the sale by the Receiver of the accounts receivable of Mara Tech.

21. The offer to finance of Baron Financial is insufficient to repay, the indebtedness owed to RBC and the Receiver's fees and disbursements including that of its counsel.

22. Pursuant to the Order of Justice Lococo, the fees and disbursements of the Receiver and its counsel are secured by a first charge on all of the assets and property of Mara Tech.

Sault Ste. Marie Leased Airport

23. The Initial Order of Justice Lococo provides the Receiver with the power and authority:

- a. to cease to carry on all or any part of the business of Mara Tech or cease to perform any contracts of Mara Tech, and
- b. sell, convey, transfer, lease or assign Mara Tech's property and assets and with respect thereto apply for any Vesting Order or other Orders necessary to convey the property or assets or any part or parts thereof to a purchaser or purchaser thereof, free and clear of any liens or encumbrances affecting such property or assets.

Order of Justice Lococo dated August 4, 2016, paras. 3(d), (l) and (m), Appendix A to the Receiver's Second Report

24. The APS with Executive Aviation is conditional upon the purchaser entering into, inter alia, new lease agreements with respect to each of the four airports.

25. In order to facilitate the purchaser entering into new leases with the airports, the Receiver will be required to terminate any existing leases between Mara Tech as tenant and the airports pursuant to which Mara Tech has possession or occupancy of the facilities at the airports from which Mara Tech operates.

26. There is an issue as to whether Marandola Holdings Ltd., a party related to Mara Tech, has any lease rights with respect to premises at Sault Ste. Marie Airport from which Mara Tech Aviation Services Ltd. ("**Aviation Services**") and Mara Tech Aviation Fuels Ltd. ("**Aviation Fuels**") operate.

27. Aviation Services and Aviation Fuels are, on behalf of Mara Tech, the sole providers of the Services to the Sault Ste. Marie Airport.

28. Aviation Services and Aviation Fuels operate from premises at the Sault Ste. Marie Airport that is described in four leases between Sault Ste. Marie Airport, as landlord and Marandola Holdings Ltd., as tenant in the four leases ("**Sault Ste. Marie Leases**").

29. Marandola Holdings Ltd. is related to all of the Debtors and carries on no business.
30. Marandola Holdings Ltd. is a dissolved corporation and in fact, it was dissolved on December 22, 2008 by order of the Director under the provisions of the *Ontario Business Corporations Act* by reason of default under the *Corporation Tax Act* and Marandola Holdings Ltd.'s Articles of Incorporation have not been revived.
31. The Sault Ste. Marie Leases predate the dissolution of Marandola Holdings Ltd. and all renewals thereof were made subsequent to the dissolution of Marandola Holdings Ltd.
32. Sault Ste. Marie Airport would not have entered into leases with a dissolved corporation.
33. Any right or entitlement that Marandola Holdings Ltd. may have had in the Sault Ste. Marie Leases, if any, has escheated to the Crown.
34. Aviation Services and Aviation Fuels are in fact the de facto tenants with respect to the premises that are the subject of the Sault Ste. Marie Leases.
35. Historically, Aviation Services has been paying any and all rent owing to Sault Ste. Marie Airport with respect to the Sault Ste. Marie Leases and continues to do so.
36. Sault Ste. Marie Airport has not consented to the Sault Ste. Marie Leases being assigned to Aviation Fuels or Aviation Services or the subject premises being sublet by Marandola Holdings Ltd. to either of them.

PART II – LAW & ARGUMENT

Contracts with a Dissolved Corporation

37. A contract made by a dissolved corporation is a nullity and no party can sue upon it.

Fred Rich v. Neil Enns, 1995 CarswellMAN 45, (MBCA)

Texaco Canada Inc. v. Mr. P's Master Tune Ignition Services (Edmonton) Ltd., 1985 CarswellAlta 501 at para. 35, (ABQB)

Approval and Vesting Order

38. The Court must exercise extreme caution before it interferes with the process adopted by a Receiver to sell an unusual asset. It is important that perspective purchasers know that, if they are acting in good faith, bargain seriously with a Receiver and enter into an agreement with it, a Court will not lightly interfere with the commercial judgment of the Receiver to sell the asset to them.

Royal Bank v. Soundair Corp., 1991 CarswellOnt 205 at para. 46, (ONCA)

39. Provided a Receiver has acted reasonably, prudently and not arbitrarily, a Court should not sit as in appeal from a Receiver's decision or review in every detail every element of the procedure by which the Receiver made its decision as to do so would be futile and duplicative. It would emasculate the role of the Receiver.

Bank of Montreal v. Dedicated National Pharmacies Inc. et al, 2011 ONSC 4634 at para. 43, (ONSC) Commercial List

Termination of Receivership

40. A court appointed Receiver has fiduciary obligations to all stakeholders of the Debtor. The court appointed Receiver is not an agent of any one party, it does not owe a greater or special duty to one party over another. The Receiver is obligated to act in the best interest of all parties.

Nash v. C.I.B.C. Trust Corp., 1996 CarswellOnt 2185 at para. 6, (ONCJ) General Division, a decision of Justice Ground

Re Philip's Manufacturing Ltd., 1992 CarswellBC 490 at para. 17, (BCCA)

41. There is a heavy onus on the parties seeking to remove a Receiver. It is heavier than on a party seeking to oppose a court appointment in the first place.

Canada Trustco Mortgage Co. v. York-Trillium Development Group Ltd., 1992 CarswellOnt 168 at para. 5, (ONCJ) General Division, Commercial List

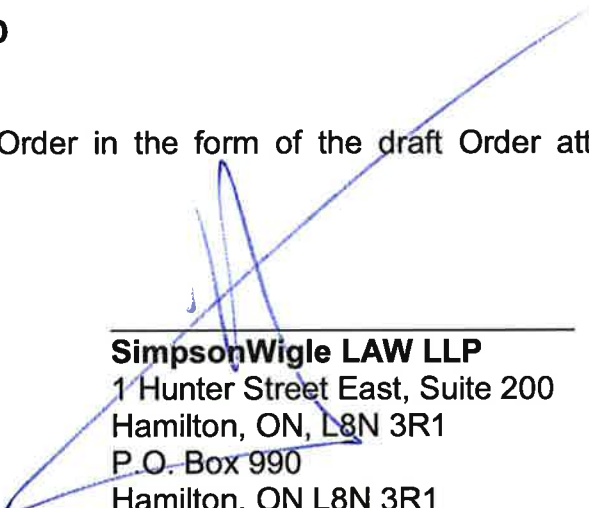
42. In considering whether an Agreement of Purchase and Sale should be approved, the court should also consider the interest of employees, suppliers and customers of the debtor company.

Re Tool-Plas Systems Inc., 2008 CarswellOnt 6258 at paras. 16 and 18, (ONSC) Commercial List a decision of Justice Morawetz

PART III - ORDER REQUESTED

43. The Receiver seeks an Order in the form of the draft Order attached to the Receiver's Motion Record, tab 3.

Dated: December 13, 2016



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TO: THE SERVICE LIST
Attached as Schedule A

SCHEDULE "A"

SERVICE LIST

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

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<p>Wishart Law Firm LLP 500 – 390 Bay Street Sault Ste. Marie, ON P6A 1X2 Mr. Gordon Acton</p> <p>gacton@wishartlaw.com</p> <p>Lawyer for Sault Ste. Marie Airport</p>	

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PROCEEDINGS COMMENCED AT
ST. CATHARINES

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OF BDO CANADA LIMITED, RECEIVER OF
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