

District of Ontario
Division No. 09 – Toronto
Court No. 31-3038619
Estate No. 31-3038619

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C 1985, C.B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF BRR LOGISTICS LIMITED

FOURTH REPORT OF BDO CANADA LIMITED IN ITS CAPACITY AS
TRUSTEE UNDER THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
BRR LOGISTICS LIMITED
May 7, 2024

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INTRODUCTION

1. On January 31, 2024 (the “**NOI Filing Date**”), BRR Logistics Limited (“**BRR**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to Part III, Division I of the *Bankruptcy and Insolvency Act*, R.S.C 1985, C. B-3, as amended (the “**BIA**”). BDO Canada Limited (“**BDO**”) consented to act as the trustee under the proposal proceedings (the “**Proposal Trustee**”).
2. Notice of the NOI filing, as prescribed by the BIA, was sent to all known creditors by the Proposal Trustee on February 6, 2024 (the “**Notice to Creditors**”), along with a copy of the Certificate of Filing a Notice of Intention to Make a Proposal (the “**NOI Certificate**”).
3. The Proposal Trustee has made the NOI Certificate, the Notice to Creditors, the first report of the Proposal Trustee dated February 23, 2024 (the “**First Report**”), the second report of the Proposal Trustee dated March 21, 2024 (the “**Second Report**”), and the third report of the Proposal Trustee dated April 9, 2024 available on its website at www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/brr (the “**Proposal Trustee’s Website**”). The Proposal Trustee will continue to post documents pertaining to the proposal proceedings on the Proposal Trustee’s Website.

PURPOSE

4. On March 20, 2024, a case conference was held to schedule a motion in relation to the dispute (the “**Walmart Dispute**”) between BRR and Wal-Mart Canada Corp. (“**Walmart**”). The Endorsement of Justice Kimmel dated March 20, 2024 (the “**March 20, 2024 Endorsement**”), attached hereto as **Appendix “A”**, provided for the following timetable in respect of the Walmart Dispute:
 - (a) the Walmart motion (the “**Walmart Motion**”) was scheduled for a half-day hearing on May 14, 2024;
 - (b) the Company was to provide its response to the outstanding information requests from Walmart by March 27, 2024;

- (c) if no resolution could be reached, the Company was to serve its motion record for the Walmart Motion by April 12, 2024;
 - (d) Walmart’s responding record was to be served by April 19, 2024;
 - (e) the Proposal Trustee’s report, if any, was to be served by no later than May 7, 2024; and
 - (f) the parties were to agree upon a timetable for all other remaining pre-hearing steps such that all materials, including any reply factum of the Company, were to be served and filed by no later than 2:30 p.m. on May 13, 2024.
5. The purpose of this fourth report (the “**Fourth Report**”) is to provide a summary of the key issues detailed in the Company’s motion record served on April 12, 2024 (the “**BRR Motion Record**”) and Walmart’s responding motion record filed on April 19, 2024 (the “**Walmart Motion Record**”, and collectively, the “**Motion Records**”).

TERMS OF REFERENCE

6. In preparing this Fourth Report, the Proposal Trustee has relied upon unaudited interim financial information, the Company’s books and records, the Affidavits of Michael Wakefield sworn February 23, 2024, March 21, 2024, and April 9, 2024 (collectively, “**Wakefield Affidavits**”), the BRR Motion Record, the Walmart Motion Record, and discussions with management and other employees of the Company, and their financial and legal advisors.
7. The financial information of the Company has not been audited, reviewed, or otherwise verified by the Proposal Trustee as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles. The reader is cautioned that this Fourth Report may not disclose all significant matters about the Company. Additionally, none of the Proposal Trustee’s procedures were intended to detect defalcations or other irregularities. If the Proposal Trustee were to perform additional procedures or to undertake an audit examination of the financial statements in accordance with generally accepted auditing standards, additional matters may have come to the Proposal Trustee’s

attention. Accordingly, the Proposal Trustee does not express an opinion or any other form of assurance on the financial or other information presented herein. The Proposal Trustee may refine or alter its observations as further information is obtained or brought to its attention after the date of this Fourth Report.

8. The Proposal Trustee assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction, or use of this Fourth Report. Any use that any party makes of this Fourth Report, or any reliance on or decisions to be made based on it, is the responsibility of such party.
9. Unless otherwise stated, all monetary amounts contained in this Fourth Report are expressed in Canadian dollars.
10. Capitalized terms not otherwise defined in this Fourth Report are as defined in the Wakefield Affidavits, the BRR Motion Record, and the Walmart Motion Record.

SUMMARY OF WALMART DISPUTE ISSUES

11. Based on a review of the BRR Motion Record and the Walmart Motion Record, the Proposal Trustee prepared the below table which summarizes the unresolved items involved in the Walmart Dispute:

BRR Logistics Ltd.
Walmart Account Summary

	Transactions	Amount
Balance Owing as at February 1, 2024 (per BRR)	1,063	\$ 1,723,531
Consisting of (per Walmart):		
Non-Disputed Invoices	1,035	1,252,220
Previously Paid Invoices	12	32,212
Invoices Not in Walmart Portal	12	49,845
Disputed Invoices	4	389,254
Balance Owing as at February 1, 2024 (per BRR)	1,063	1,723,531
Less: Payments made by Walmart		
23-Feb-24		(16,341)
09-Apr-24		(394,295)
10-Apr-24		(25,286)
Balance Owing as at April 12, 2024 (per BRR)		1,287,608
Unresolved Items		
Alleged Overpayment (per Walmart)	(i)	(489,193)
Invoices Paid (per Walmart)	(ii)	12 (32,212)
Invoices Not in Walmart Portal (per Walmart)	(iii)	12 (49,845)
Disputed Invoices (per Walmart)	(iv)	4 (389,254)
Chargebacks (per Walmart)	(v)	1,168 (358,253)
Total Adjustments	1,196	(1,318,757)
Adjusted Balance Owing From/(To) Walmart (per Walmart)		\$ (31,149)

12. As evidenced in the table above, the unresolved items can be placed into five (5) categories: (i) alleged overpayment, (ii) paid invoices, (iii) invoices not in Walmart’s portal, (iv) disputed invoices, and (v) chargebacks.

(i) Alleged Overpayment

13. As detailed in the Motion Records, the Alleged Overpayment arises from an arrangement between BRR and Walmart (the “**Arrangement**”) whereby BRR was responsible for the distribution of Red Baron pizza products (the “**Pizza Products**”), purchased by Walmart from Schwan’s Company, to various Walmart locations.

14. Based on a review of the Motion Records, there does not appear to be any dispute in respect of the quantities of Pizza Products distributed under the Arrangement; the dispute is solely about price.

15. Appendix D of the BRR Motion Record and Appendix C of the Walmart Motion Record both appear to reflect the same “list price” for the Pizza Products. However, the Walmart Motion Record also reflects certain discounts, which the BRR Motion Record does not, and the Proposal Trustee understands that it is these discounts that are giving rise to the Alleged Overpayment. For ease of review and comparison, the Proposal Trustee has prepared the table below, which the Proposal Trustee believes summarizes the parties’ respective positions.

	Price per BRR		Price per Walmart			Variance
	List Price	List Price	Discount	Price	Net Price	
	A	B	C (A * (1-B))	D	E (C * (1-D))	
	(per package)		(per package)			(per package)
Red Baron Classic			27.5%		1.5%	
Red Baron Thin & Crispy			27.5%		1.5%	
Red Baron Deep Dish Singles			16.5%		1.5%	

(ii) Paid Invoices

16. The Walmart Motion Record suggests that the undernoted twelve (12) invoices totaling \$32,211.91 were previously paid by Walmart on the dates indicated. As at the date of this Fourth Report, BRR was still reviewing whether payment had been received by either BRR or Sallyport Commercial Finance ULC. The Proposal Trustee has prepared the table below setting out what it understands to be Walmart’s position as to the status of these payments:

Cust No	Cust Name	Doc No	Doc Date	Amout	Walmart Position
9054381400	WALMART OSHAWA #1056-9054381400	0001739164	4-22-2023	80.52	Paid \$191.96 on May 3/23
9054381400	WALMART OSHAWA #1056-9054381400	0001742144	5-6-2023	136.32	Paid \$413.28 on May 15/23
8072237190	WAL-MART DRYDEN #3024-8072237190	0001744515	5-18-2023	94.64	Paid \$94.64 on Jun. 5/23
9056709966	WALMART MISSISSAUGA DC 70-9056709966	0001758423	7-18-2023	3,579.94	Paid \$77,683.86 on Aug. 21/23
6139338665	WALMART DISTRIBUTION CORN-6139338665	0001762021	8-6-2023	3,109.75	Paid \$24,746.28 on Sep. 11/23
5068527050	WALMART DISTRIBUTION MONC-5068527050	0001773110	9-26-2023	1,553.08	Paid \$10,031.04 on Nov. 8/23
9056709966	WALMART MISSISSAUGA DC 70-9056709966	0001775002	10-2-2023	2,698.25	Paid \$23,950.44 on Nov. 13/23
	Walmart Head Office	WF0000504950	10-6-2023	41.92	Paid \$41.92 on Nov. 6/23
	Walmart Head Office	WF0000505784	10-13-2023	83.84	Paid \$383.38 on Nov. 13/23
6139338665	WALMART DISTRIBUTION CORN-6139338665	0001777820	10-15-2023	4,039.08	Paid \$19,828.80 on Nov. 27/23
	Walmart Head Office	WF0000509262	11-27-2023	453.36	Paid \$453.36 for invoice 509264 on Dec. 27/23
21843	WAL-MART CANADA CORP	IN000004288	1-3-2024	16,341.21	Paid Feb. 22/24
Total				32,211.91	

(iii) Invoices Not in Walmart’s Portal

17. The Walmart Motion Record suggests that twelve (12) invoices totaling \$49,844.94, which are detailed by the Proposal Trustee in the table below, were not recorded in Walmart’s portal system. As at the date of this Fourth Report, BRR was still reviewing to determine

why the invoices were not recorded in Walmart’s portal system.

Cust No	Cust Name	Doc No	Doc Date	Amout
	Walmart Head Office	WF0000489856	5-16-2023	76.06
4162981210	WALMART SUPER CENTRE #108~4162981210	0001756354	7-10-2023	466.40
6045951250	WAL-MART DC #6072 SURREY ~6045951250	0001758773	7-24-2023	49,378.24
	Walmart Head Office	CN_WF9000506401	10-23-2023	(193.75)
	Walmart Head Office	WF0000506401	10-23-2023	193.75
	Walmart Head Office	CN_WF9000508762	11-20-2023	(32.00)
9057751610	WALMART BRADFORD #1101~9057751610	0001784130	11-20-2023	38.60
9057751610	WALMART BRADFORD #1101~9057751610	0001784131	11-20-2023	339.00
	Walmart Head Office	WF0000508762	11-20-2023	32.00
	Walmart Head Office	CN_WF9000509256	11-27-2023	(93.76)
	Walmart Head Office	CN_WF9000509262	11-27-2023	(453.36)
	Walmart Head Office	WF0000509256	11-27-2023	93.76
Total				49,844.94

(iv) Disputed Invoices

18. The Walmart Motion Record suggests that four (4) invoices totaling \$389,254.07, the details of which are set out by the Proposal Trustee below, are disputed by Walmart for the following reasons:

Cust No	Cust Name	Doc No	Doc Date	Amout
21843	WAL-MART CANADA CORP	IN000003267	5-1-2023	252,803.60
21843	WAL-MART CANADA CORP	IN000003751	8-12-2023	83,282.44
21843	WAL-MART CANADA CORP	IN000004264	8-12-2023	2,028.01
21843	WAL-MART CANADA CORP	IN000004289	1-3-2024	51,140.02
Total				389,254.07

- (a) Invoices 3267 and 4264 were on account of (i) costs and expenses incurred by BRR in connection with late and missed appointments by Walmart, and (ii) additional fees for re-shipping products and waiting time for drivers. Walmart’s view is that, unlike the Walmart Supplier Agreement (as defined in the Walmart Motion Record), which entitles Walmart to charge fees to suppliers for violating Walmart’s minimum standards, the Distribution Agreement (as defined in the Walmart Motion Record) does not entitle BRR to charge such fees for late and missed appointments, re-shipping products, or wait times.
- (b) Invoice 3751 was on account of a volume deficit between the number of cases delivered by BRR, and what is believed to be the minimum number of cases agreed upon by Walmart. Walmart is of the view that it agreed on a contractual rate for certain

shipments, but not on minimum volume, and accordingly, BRR cannot charge for same.

- (c) Invoice 4289 was on account of transportation costs associated with leftover inventory following the termination of the Distribution Agreement (as defined in the Walmart Motion Record). Walmart is of the view that the transportation services were not subject to the terms of the Distribution Agreement and pricing contained therein. This dispute appears to relate solely to pricing (i.e. \$425 per freight load vs. \$1.49 per case) as opposed to a volume issue.

(v) Chargebacks

- 19. Attached with Exhibit J to the Walmart Motion Record is a schedule detailing 1,168 chargeback records (the “**Chargebacks**”) totaling \$358,252.82 and compiled by Walmart. Walmart is of the view that its Supplier Information Manual (as defined in the Walmart Motion Record) entitles Walmart to bill certain charges and expenses back to suppliers. The Chargebacks applied to specific invoices purportedly relate to (i) damaged shipments, incorrect quantities, or wrong items, (ii) blue box fees, (iii) non-compliance charges, (iv) e-commerce fees, and (v) missing or unusable merchandise due to temperature issues. Further, Walmart is of the view that the Supplier Information Manual sets out a process for disputing the Chargebacks via the Walmart online portal.
- 20. BRR is of the view that the Chargebacks are overstated as BRR had already provided Walmart with credits which were appropriate, and had no previous knowledge of these Chargebacks being asserted by Walmart. Further, BRR is unable to verify the appropriateness of the Chargebacks.

All of which is respectfully submitted at Toronto, Ontario, this 7th day of May, 2024.

BDO CANADA LIMITED, solely in its
capacity as the Proposal Trustee of BRR
Logistics Limited and not in its personal capacity.



Per: Josie Parisi, CPA, CA, CBV, CIRP, LIT
Senior Vice-President

Appendix A – Endorsement of Justice Kimmel dated March 20, 2024



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: BK-24-03038619-0031 DATE: 20 March 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: IN THE MATTER OF THE PROPOSAL OF BRR LOGISTICS LIMITED

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE KIMMEL:

1. BRR Logistics Limited ("BRR" or the "Company") seeks to schedule the following two motions:

- a. a motion for an expedited adjudication of a dispute with Wal-Mart Canada Corp. ("Walmart") in respect of a claimed receivable owing by Walmart to the Company and Walmart's claim that it overpaid prior invoices (the "Walmart Motion"); and
- b. a motion for advice and directions in respect of certain goods of customers/suppliers being held by the Company (the "Inventory Motion").

The Inventory Motion

2. The Company must vacate its current warehouse premises by March 31, 2024. This has created some urgency, at least for an initial appearance and preliminary order and directions.
3. The Company is consulting with the Proposal Trustee and considering its options regarding the storage and warehousing services that it provides to its customers, many of whom are also suppliers. The Company has compiled a list of affected customers/suppliers.
4. There are potential set-off issues as between the Company and some of these customers/suppliers. This situation is further complicated by the fact that the Company's accounts receivable has been purchased by its senior secured creditor, Sallyport Commercial Finance ULC ("Sallyport").
5. On the Inventory Motion, the Company will be seeking advice and directions from the Court regarding the continued storage (at another location) and/or disposition of the inventory. Due to its urgency, an initial return date has been scheduled for the Inventory Motion on March 26, 2024 for 90 minutes. The following timetable shall be adhered to in respect of this first return date for the Inventory Motion:
 - a. The Company shall serve its motion materials, together with a copy of this endorsement, on all interested stakeholders and its general service list by the close of business on March 21, 2024.
 - b. The Proposal Trustee shall serve its report in respect of this Inventory Motion by the close of business on March 22, 2024.
 - c. Any stakeholder who intends to participate and take a position on this motion shall advise the Company of such intention and provide a brief outline of its position by 2 p.m. on March 25, 2024.
 - d. The Company shall deliver a factum or Aide Memoire by the close of business on March 25, 2024.
 - e. All material for the March 25, 2024 first return of the Inventory Motion shall have been served, filed and uploaded into CaseLines by no later than 6 p.m. on March 25, 2024.

The Walmart Motion

6. The Company first sought to schedule the Walmart Motion on February 27, 2024 when appearing before Conway J. on the initial order in this matter. At that time, the Company was aware of, and disclosed to the court, that there appeared to be a disagreement with Walmart both in terms of the accounting for outstanding accounts receivable arising prior to the January 31, 2024 Filing Date and in respect of an overpayment that Walmart claimed to have made on earlier invoices and was seeking to set off. The parties have been exchanging information since then, and Walmart has agreed to pay today an initial amount of \$425,000 in respect of amounts acknowledged to be owing.
7. Walmart says it will pay whatever is owing upon a final reconciliation, but the parties are not confident today that they will be able to reach agreement on that amount having regard to the current differences of opinion. While they continue to work towards an agreement, the Company and Sallyport asked that the motion be scheduled with a timetable that builds in time for continued negotiations on the front end.
8. The Walmart Motion has been scheduled for a half day on May 14, 2024. The parties shall adhere to the following timetable for pre-hearing steps:
 - a. The Company shall provide its response to outstanding information requests from Walmart by March 27, 2024.

- b. If no resolution can be reached, the Company shall serve its motion record for the Walmart Motion by April 12, 2024.
 - c. Walmart's responding motion record shall be served by April 19, 2024.
 - d. The Proposal Trustee's report, if any, shall be served by no later than May 7, 2024.
 - e. The parties shall agree upon a timetable for all other remaining pre-hearing steps such that all materials, including a reply factum if deemed appropriate by the Company, shall have been served, filed and uploaded into CaseLines by no later than 2:30 on May 13, 2024.
9. This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out.

A handwritten signature in cursive script that reads "Kimmel J.".

KIMMEL J.

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C 1985, C.B-3, AS AMENDED**

District of Ontario
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**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF BRR LOGISTICS LIMITED**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

**FOURTH REPORT OF BDO CANADA
LIMITED
May 7, 2024**

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