Court File No.: CV-22-00078960-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

BETTER IMAGE COLLISION INC.

Respondent

FACTUM OF THE RECEIVER

(Receiver's Motion returnable November 10, 2026)

October 27, 2026

HARRISON PENSA LLP
Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)
Thomas Masterson (LSO#76835U)
Tel: 519-679-9660
Fax: 519-667-3362
Email: thogan@harrisonpensa.com
Email: tmasterson@harrisonpensa.com

Solicitors for the Receiver,
BDO Canada Limited

TO: SERVICE LIST

PART I – NATURE OF MOTION

1. This is a motion by BDO Canada Limited ("**BDO**") in its capacity as Court-appointed receiver (in such capacity, the "**Receiver**"), appointed pursuant to an order of the Ontario Superior Court of Justice (the "**Court**") dated July 7, 2022 (the "**Appointment Order**") of the Property (as defined in the Appointment Order) of the Respondent, Better Image Collision Inc. (the "**Debtor**") for, *inter alia*, the following relief:

   a) An Order:

      (i) abridging the time for service, filing and confirmation of the Notice of Motion and the Motion Record, and validating service so that this motion is properly returnable on November 10, 2026;

      (ii) approving the Second Report of the Receiver dated October 7, 2026 (the "**Second Report**"), and the activities and conduct of the Receiver set out therein, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Second Report;

      (iii) approving the Receiver's Statement of Receipts and Disbursements as detailed in the Second Report;

      (iv) approving the fees and disbursements of the Receiver and its counsel, and the Fee Accruals (as defined in the Second Report), and authorizing payment of same;

      (v) authorizing and directing the Receiver to file an assignment in bankruptcy on behalf of the Debtor, and to act as trustee in the bankruptcy of the Debtor;

      (vi) that upon payment of the amounts set out herein and upon the Receiver completing its remaining activities, as described in the Second Report, the Receiver shall be discharged as Receiver of the undertaking,

property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO in its capacity as Receiver; and,

(vii) releasing BDO as Receiver from liability for its actions while acting in such capacity, save and except for the Receiver's gross negligence or willful misconduct.

2. It is the position of the Receiver that the relief requested should be granted for the following reasons:

a) the Receiver's actions were reasonable and the Receiver, at all times, acted within its mandate in carrying out its actions, pursuant to the provisions of the Appointment Order;

b) the fees of the Receiver and its counsel and the Statement of Receipts and Disbursements are reasonable in the circumstances;

c) the requested assignment in bankruptcy is authorized pursuant to the Appointment Order, and will provide the most efficient forum to effect a distribution to the remaining creditors of the Debtor; and,

d) the Receiver will have completed its mandate and should be discharged.

PART II – THE FACTS

The Receiver and the Proceedings

3. Pursuant to the Appointment Order, which took effect on October 6, 2022, BDO was appointed as Receiver, without security, of all of the assets, undertakings and properties of the Debtor.

Second Report of Receiver, dated October 7, 2026 (the "Second Report"), para 1 and Appendix "A" thereto.

4. Pursuant to an Order of this Court made on May 16, 2023 (the "**Approval and Vesting Order**"), a sale of certain real property of the Debtor was approved.

Second Report, para 3 and Appendix "B" thereto.

5. Pursuant to an Order of this Court made on May 16, 2023 (the "**Ancillary Order**"), the Receiver, among other things, was authorized to make an interim distribution to priority and secured creditors (the "**Approved Interim Distribution**").

Second Report, para 4 and Appendix "C" thereto.

The Receiver's Activities

6. The Receiver's activities since the Approval and Vesting Order and the Ancillary Order have concentrated on, *inter alia*:

   a. completing the sale pursuant to the Approval and Vesting Order;

   b. completing the Approved Interim Distribution;

   c. reviewing unsecured claims against the Debtor; and,

   d. performing other statutory reporting and related administrative tasks as required.

Second Report, para 11.

7. The Receiver requests that its actions, as outlined in the Second Report, be approved by this Honourable Court.

Statement of Receipts and Disbursements

8. The Receiver's Statement of Receipts and Disbursements is detailed in the Second Report.

Second Report, paras 12 to 15, and Appendix "D" thereto.

9. It is the Receiver's position that such receipts and disbursements are reasonable and should be approved.

Professional Fees and Disbursements

10. The Receiver and its counsel have each properly incurred fees and disbursements as detailed in the Second Report.

Second Report, paras 16 to 17 and Appendices "E" and "F" thereto.

11. It is the position of the Receiver that such fees and disbursements, and the Fee Accruals, as defined in the Second Report, are fair and reasonable in the circumstances, and should be approved by this Honourable Court.

Second Report, para 18.

Proposed Bankruptcy

12. The Appointment Order permits the Receiver to file an assignment in bankruptcy on behalf of the Debtor.

Second Report, para 29; Appointment Order, para 3(r).

13. To administer the remaining creditor claims, including claims of which the Receiver may not be aware, the Receiver proposes to assign the Debtor into bankruptcy. The Receiver is of the view that a bankruptcy would provide the most efficient forum to complete a distribution to the remaining creditors of the Debtor.

Second Report, paras 29 and 30.

Discharge of the Receiver

14. The Receiver will have substantially completed the administration of the estate.

15. The Receiver therefore seeks its discharge and that it be released from any and all liability that it has now or may hereafter have by reason of, or in any way arising out of,

the acts or omissions of BDO while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part.

PART III – ISSUES, LAW AND ARGUMENT

a) Abridging the Time for Service and Filing of the Motion Record

16. The Court may, by order, extend or abridge any time prescribed by the Rules on such terms as are just. Further, the Court may dispense with compliance with any Rule at any time where and as necessary in the interest of justice. Finally, the Court may dispense with service where it is impractical to effect prompt service and/or it may validate service where it is satisfied that the document came to the notice of the person to be served.

Rules 2.03, 3.02, 16.04 and 16.08, Rules of Civil Procedure, R.R.O. 1990, Reg. 194

b) The Receiver's Activities Should be Approved

17. The Receiver's activities in these proceedings have been undertaken in furtherance of the Receiver's duties and are consistent with the Receiver's powers, as set out in the Appointment Order. The Receiver has acted reasonably and in the best interests of the Debtor's stakeholders, and this Court has the inherent jurisdiction to approve such activities.

Bank of America Canada v. Willann Investments Ltd. (1993) 20 C.B.R. (3d) 223 (ONSC), at paras. 3 and 4.

18. In *Target Canada Co. (Re),* the then Regional Senior Justice Morawetz found that there are good policy and practical reasons for the Court to approve the activities of a Court officer, and to provide a level of protection to Court officers. Specifically, Court approval:

a) allows the court officer to move forward with the next steps in the proceedings;

b) brings the court officer's activities before the Court;

c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;

d) enables the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;

e) provides protection for the court officer not otherwise provided by the *Bankruptcy and Insolvency Act* ("**BIA**"); and

f) protects the creditors from the delay in distribution that would be caused by:

(i) re-litigation of steps taken to date, and

(ii) potential indemnity claims by the court officer.

Target Canada Co. (Re), 2015 ONSC 7574 at paras 12, 22 and 23.

19. All of the Receiver's activities were conducted within the ambit of its powers granted by the Appointment Order and each of the activities were necessary to ensure that the proceedings were as orderly, effective and fair to all stakeholders as possible.

20. The Receiver therefore respectfully submits that the Second Report, and its activities to date as set out therein, should be approved by this Court.

c) The Statement of Receipts and Disbursements, the Fees and Disbursements of the Receiver and its Counsel, and the Fee Accruals Should be Approved

21. The Receiver's Statement of Receipts and Disbursements is appended to the Second Report, and is reasonable. The Receiver respectfully requests that such receipts and disbursements be approved by this Honourable Court.

22. The Receiver respectfully submits that the fees and disbursements of the Receiver and the Receiver's counsel, as detailed in the Second Report, should be approved.

23. In determining whether to approve the fees of a receiver and its counsel, the Court should consider whether the remuneration and disbursements incurred in carrying out the receivership were fair and reasonable and take into consideration the following factors, which constitute a useful guideline, but are not exhaustive:

a) the nature, extent and value of the assets;

b) the complications and difficulties encountered;

c) the degree of assistance provided by the debtor;

d) the time spent;

e) the Receiver's knowledge, experience and skill;

f) the diligence and thoroughness displayed;

g) the responsibilities assumed;

h) the results of the receiver's efforts; and,

i) the cost of comparable services when performed in a prudent and economical manner.

Bank of Nova Scotia v. Diemer, 2014 ONCA 851, at paras. 33 and 45.

24. It is the Receiver's view that the fees and disbursements of the Receiver and its counsel, and the Fee Accruals (as defined in the Second Report), were incurred at their respective standard rates and charges, and are fair, reasonable and justified in the circumstances. Further, the fees and disbursements sought accurately reflect the work done by the Receiver and by its counsel in connection with the receivership.

d) Assignment in Bankruptcy

25. The Appointment Order permits the Receiver to file an assignment in bankruptcy on behalf of the Debtor.

26. Section 243(1)(c) of the BIA has been interpreted as giving judges the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise in relation to court ordered receiverships and to do what practicality demands.

Peace River Hydro Partners v. Petrowest Corp., 2022 SCC 41 (CanLII) at para. 148.

27. It is well settled that this Court has the authority to empower a receiver to file an assignment in bankruptcy on behalf of a debtor. In *Bank of Montreal v. Owen Sound Golf and Country Club*, Brown J. (as he then was) held that "[i]t is well settled that a court possesses the power to

authorize a receiver to file an assignment in bankruptcy or consent to a bankruptcy order". This principle was confirmed in *RBC v. Gustin,* 2019 ONSC 5370.

Bank of Montreal v. Owen Sound Golf and Country Club, 2012 ONSC 557 at para 7.

28. The Receiver therefore respectfully requests that in the current circumstances this Honourable Court use its authority to grant the Order sought by the Receiver in relation to the assignment in bankruptcy, to provide the most efficient forum to effect a distribution to the remaining creditors of the Debtor.

e) Discharge and Release of the Receiver Should be Approved

29. Pursuant to Rule 41.06 of the *Rules of Civil Procedure*, a receiver may be discharged only by the order of a judge.

***Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 41.06.**

30. The Receiver has substantially completed its mandate as contemplated by the Appointment Order and the BIA, and respectfully submits that it is appropriate to discharge the Receiver upon the filing of its Certificate.

31. The Receiver also seeks a release from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Receiver while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the part of the Receiver.

32. The Receiver submits that it is appropriate to grant a release in its favour. In *Pinnacle v. Kraus*, the Court granted an Order discharging and releasing a court-appointed receiver. In doing so, the Court noted that such a release is expressly contemplated by the Commercial List Model Discharge Order and, in the absence of improper or negligent conduct on the part of the receiver, such releases should be granted.

Pinnacle v. Kraus, 2012 ONSC 6376 at para 47.

33. Throughout these proceedings, the Receiver has acted prudently and the Receiver's activities have been thoroughly disclosed. Accordingly, the Receiver respectfully submits that the requested release is reasonable in the circumstances, will provide the Receiver with finality, and should be granted.

PART IV – ORDER REQUESTED

34. For the reasons set forth herein and in the Second Report, the Receiver respectfully requests that the Court grant the Order sought.

I hereby certify that I am satisfied as to the validity of every authority cited in this Factum, all of which is respectfully submitted this 27th day of October, 2026.



HARRISON PENSA LLP
Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)
Tel: 519-679-9660
Fax: 519-667-3362
Email: thogan@harrisonpensa.com

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Bank of America Canada v. Willann Investments Ltd.* (1993) 20 C.B.R. (3d) 223 (ONSC)
2. *Bank of Montreal v. Owen Sound Golf and Country Club,* 2012 ONSC 557
3. *Bank of Nova Scotia v. Diemer,* 2014 ONCA 851 (CanLII)
4. *Pinnacle v. Kraus,* 2012 ONSC 6376
5. *Peace River Hydro Partners v. Petrowest Corp.,* 2022 SCC 41 (CanLII)
6. *Target Canada Co. (Re),* 2015 ONSC 7574

SCHEDULE "B"
RELEVANT STATUTES

***Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.**

COURT MAY DISPENSE WITH COMPLIANCE

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

EXTENSIONS OR ABRIDGMENT

General Powers of Court

3.02(1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Times in Appeals

(3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court.

Consent in Writing

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by filing a consent.

SUBSTITUTED SERVICE OR DISPENSING WITH SERVICE

Where Order May be Made

16.04 (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interest of justice, may dispense with service.

Effective Date of Service

(2) In an order for substituted service, the court shall specify when service in accordance with the order is effective.

(3) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules.

VALIDATING SERVICE

16.08 Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

(a) The document came to the notice of the person to be served; or

(b) The document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

DISCHARGE

41.06 A receiver may be discharged only by the order of a judge.

ROYAL BANK OF CANADA v. BETTER IMAGE COLLISION INC.

Applicant Respondent

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PROCEEDING COMMENCED AT
HAMILTON, ONTARIO

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HARRISON PENSA LLP
Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)
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