



COURT FILE NUMBER 2503-06252

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

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

AND IN THE MATTER OF THE INTERIM RECEIVERSHIP OF MAHINDRA INVESTMENTS (AB) LTD. and MAHINDRA JEWELLERS (AB) LTD., SURREY GOLD JEWELLERS (AB) LTD. and BLUEWATER (786) CONTRACTORS LTD.

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS MAHINDRA INVESTMENTS (AB) LTD., MAHINDRA JEWELLERS (AB) LTD., SURREY GOLD JEWELLERS (AB) LTD. and BLUEWATER (786) CONTRACTORS LTD.

DOCUMENT **BENCH BRIEF OF ROYAL BANK OF CANADA**

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**APPLICATION BEFORE THE HONOURABLE JUSTICE SIMARD
APRIL 3, 2025 AT 2:00 PM ON THE CALGARY COMMERCIAL LIST**

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PART 1 – INTRODUCTION

1. Royal Bank of Canada (“**RBC**”), without notice, applies to this Honourable Court seeking an order (the “**Interim Receivership Order**”) appointing BDO Canada Limited (“**BDO**”) as interim receiver under Section 47 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) of the jewellery and other inventory, accounts, money, and instruments, and books and records (including chattels in which such books and records are contained) (collectively, the “**Property**”) of Mahindra Investments (AB) Ltd. (“**Investments**”), Mahindra Jewellers (AB) Ltd. (“**Jewellers**”), Surrey Gold Jewellers (AB) Ltd. (“**Surrey Gold**”) and Bluewater (786) Contractors Ltd. (“**Bluewater**” with Investments, Jewellers and Surrey Gold, collectively, the “**Debtors**”) until the earliest of: (a) the appointment of a receiver under Section 243 of the BIA; or (b) May 2, 2025 (unless renewed by a further order of this Court prior to the expiry date).
2. At a hearing on notice to the Debtors, following the expiry of the 10-day notice period pursuant to Section 244 of the BIA after delivery of a Notice of Intention to Enforce Security, RBC also seeks an order (the “**Receivership Order**”) appointing BDO as receiver of all the assets, property and undertaking of each of the Debtors.

PART 2 - FACTUAL BACKGROUND

3. Below is a summary of the relevant facts. The detailed facts are set out in the Affidavit of Jasdeep (Jessica) Chohan sworn March 27, 2025 (the “**Chohan Affidavit**”) and the Pre-Filing Report of BDO Canada Limited in its capacity as proposed Interim Receiver (the “**BDO Pre-Filing Report**”). Unless otherwise stated, capitalized terms used in this brief are defined in the Chohan Affidavit.
4. Jewellers and Surrey Gold operate a jewellery store located in Edmonton, Alberta within a commercial strata condominium owned by Investments.¹
5. RBC is a secured creditor of each of the Debtors by way of direct loans and guarantees.² In total, the Debtors owe RBC \$5,428,250.73 as of March 24, 2024, plus ongoing legal fees on a solicitor and its own client basis, interest, and costs (the “**Indebtedness**”).³

¹ Chohan Affidavit, paras. 7-8.

² Chohan Affidavit, paras. 11-29.

³ Chohan Affidavit, paras. 66-71.

6. Each of the Debtors have granted security to RBC to secure the Indebtedness by way of, among other things, general security agreements in favour of RBC over all the Debtors' present and after acquired personal property⁴, as well as Investments providing collateral mortgages over commercial condominium units it owns.⁵
7. RBC perfected its security interests against each of the Debtors' personal property by registration of financing statements in the Alberta Personal Property Register and by registering its mortgages with the Alberta Land Titles office.⁶
8. The Debtors are in default of their loan agreements and security with RBC, including failing to pay their respective credit facilities, including upon maturity, breaching financial covenants, failing to provide required reporting and financial statements, and Investments causing municipal property taxes to go unpaid requiring RBC to pay the property taxes to avoid municipal tax sales which stand as RBC's collateral.⁷
9. In addition, there are more causes for RBC's concern (among other things):
 - (a) RBC received a garnishment order in the amount of \$60,000 from the BC Minister of Finance for a company related to the Debtors, Mahindra Jewellers Ltd., which had an account with RBC.⁸
 - (b) Despite RBC's attempts to contact the Debtors principals, the Dhunnas, since February 2024, RBC has received no response from the Dhunnas other than intermittent communications from Aarti Dhunna, the Dhunnas' daughter, advising RBC that she will talk to her parents about the Debtors' defaults under the credit agreements with RBC;⁹
 - (c) Multiple pre-authorized cheques, particularly for Investments, have been returned over the last 45 days due to insufficient funds;¹⁰

⁴ Chohan Affidavit, paras. 16, 23-26 and 28.

⁵ Chohan Affidavit, para. 16.

⁶ Chohan Affidavit, paras. 17, 24, 26 and 29.

⁷ Chohan Affidavit, paras. 31-38.

⁸ Chohan Affidavit, para. 36.

⁹ Chohan Affidavit, para. 37.

¹⁰ Chohan Affidavit, para. 38

- (d) BDO Canada Limited (“**BDO**”) was appointed as receiver of companies numerous related to the Debtors located in British Columbia (the “**BC Receivership**”) – namely, Mahindra Jewellers Ltd., Surrey Gold Jewellers Ltd., 1237647 B.C. Ltd., 1257271 B.C. Ltd., Heera Jewellers Inc., P. Sona Jewellers Inc., and RCJ Jewellers Inc. (collectively, the “**Mahindra BC Group**”).¹¹
- (e) The Debtors and Mahindra BC Group are controlled by the same principals.¹²
10. As described in more detail below, BDO, in its capacity as court-appointed receiver of the Mahindra BC Group in the BC Receivership, has faced significant challenges and disruption by the related party debtors, including attempts to move and conceal assets;¹³ surreptitiously deletion of video footage using remote access after its appointment;¹⁴ aggressive behaviour requiring police intervention;¹⁵ and a total lack of cooperation.¹⁶
11. RBC is about to issue Notices of Intention to Enforce Security under Section 244 of the BIA (the “**BIA Notice**”) to the Debtors and thereafter will seek the appointment of a receiver. RBC is genuinely concerned about the status, stability, and preservation of its collateral if RBC issues a demand letter and BIA Notice to the Debtors without an interim receiver in place and if RBC provides notice of this interim receivership application to the Debtors.¹⁷

PART 3 - ISSUES

12. This bench brief addresses the following issues:
- (a) whether this Court should grant the Interim Receivership Order on a without notice basis; and
- (b) whether this Court should grant the Receivership Order.

¹¹ BDO Pre-Filing Report, para. 1.

¹² See Chohan Affidavit, para. 6 and BDO Pre-Filing Report at para. 17.

¹³ BDO Pre-Filing Report, para. 13-15, 18.

¹⁴ BDO Pre-Filing Report, para. 20

¹⁵ BDO Pre-Filing Report, paras. 8-10.

¹⁶ BDO Pre-Filing Report, paras. 21, 23

¹⁷ Chohan Affidavit, paras. 72 and 81-83.

PART 4 - LAW AND ARGUMENT

Interim Receiver is Necessary for Protection of RBC's Collateral

13. Section 47 of the BIA¹⁸ gives the court jurisdiction to appoint an interim receiver if the court is satisfied that the applicant creditor is about to issue a section 244 BIA notice to the debtor(s)¹⁹, and the evidence establishes that the appointment of an interim receiver is necessary for the protection of the debtor's estate or the interests of the creditor sending the notice.²⁰
14. Interim receivers are intended to protect the interests of secured creditors during the period between issuing a BIA Notice and the appointment of a receiver. As noted by Justice Romaine in *Alberta Health Services v. Network Health Inc.*, "sections 47 and 47.1 were added to the BIA in 1992 and were intended to give greater protection and flexibility to secured creditors during the period of time when they were in the process of enforcing their security."²¹
15. As is the present case, the immediate risk of asset dissipation is a well-recognized ground for granting an exception to the 10-day notice period under section 243(1.1)(b). In *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136, the Court described asset dissipation as an "obvious example" of the type of emergency that justifies such relief.²² Where delay would result in further or irreparable harm to the secured creditor, immediate judicial intervention is both appropriate and necessary.²³
16. RBC submits this case satisfies the legal test to appoint an interim receiver for the following reasons:
 - (a) The Debtors are in substantial default of the terms of their loan agreements with RBC, including payment defaults, breaches of financial covenants, reporting breaches and Investments allowing its real property secured to RBC to almost go into tax sale.

¹⁸ [Bankruptcy and Insolvency Act, RSC 1985, c B-3 \[BIA\], s 47, \[TAB 1\]](#)

¹⁹ [BIA, s.47\(1\) \[TAB 1\]](#)

²⁰ [BIA, ss. 47\(3\) \[TAB 1\]](#)

²¹ [Alberta Health Services v. Network Health Inc., 2010 ABQB 373, para 16, \[TAB 2\]](#)

²² [Pandion Mine Finance Fund LP v. Otso Gold Corp., 2022 BCSC 136, para 45. \[TAB 3\]](#)

²³ [Paragon Capital Corporation Ltd. v. Merchants & Traders Assurance Co. 2002 ABQB 430 \[Paragon\], para 33, \[TAB 4\]](#)

- (b) The evidence establishes that RBC is about to issue a notice under Section 244 of the BIA. In the Chohan Affidavit, the affiant affirms that RBC will issue demand letters and BIA Notices upon the appointment of an interim receiver and, once issued, serve those documents on the Debtors and include them in a supplemental affidavit to be served on the service list.²⁴
- (c) The evidence establishes an interim receiver is necessary in this case for the protection of RBC's collateral. The BDO Pre-Filing Report reports on the Mahindra BC Group's efforts to conceal and move collateral, in particular jewellery, subject to the secured creditors' security in the BC Receivership and its inability to recover the Mahindra BC Group's books and records:
- (i) 20-30 minutes after being appointed as receiver in the BC Receivership, BDO arrived at the Mahindra BC Group's flagship store.²⁵ It was found to be nearly empty despite video footage shortly before the receivership showing a store fully stocked with jewellery;²⁶
 - (ii) Video footage revealed employees of the Mahindra BC Group packing up jewellery inventory until the receiver's arrival at the premises and attempting to conceal inventory;²⁷
 - (iii) BDO found jewellery inventory hidden within cabinets, the ceiling, and a freezer;²⁸
 - (iv) Video footage was accessed remotely and deleted following BDO's appointment as receiver;²⁹
 - (v) BDO has received no cooperation or information from the Mahindra BC Group or its principals to allow it to fully account for the inventory;³⁰

²⁴ Chohan Affidavit, para. 72.

²⁵ BDO Pre-Filing Report, para. 5

²⁶ BDO Pre-Filing Report, paras. 6 and 13.

²⁷ BDO Pre-Filing Report, paras. 13-15.

²⁸ BDO Pre-Filing Report, para. 18.

²⁹ BDO Pre-Filing Report, para. 20.

³⁰ BDO Pre-Filing Report, para. 23.

- (vi) BDO is of the view that if RBC provides notice of its intention to enforce its security against the Mahindra Alberta Group or any of the debtor companies are notified of a further receivership application for other retail locations, the inventory will likely be removed before a receiver can secure it.³¹
- (vii) BDO noted that upon taking possession of the head office location for the Mahinda BC Group that it had been vacated. Specifically, much of the digital and physical records related to the Mahindra BC Group had been removed prior to the Receiver's arrival.³²

The Property includes valuable jewellery - gold, silver, diamonds and other precious metals and gemstones – that can be easily misappropriated to RBC's substantial detriment.

- (d) BDO is uncertain if the books and records will be available if advance notice of a receivership application is provided.³³
- (e) Investments and Jewellers have bank accounts with RBC that have had no recent activity moving through them. The accounts previously had prior activity. RBC reasonably believes that the Debtors are banking at other financial institutions where RBC's collateral is being held.³⁴
- (f) The Debtors' principals in the BC Receivership, the Dhunnas, are the same as the principals of the Alberta operation financed by RBC.³⁵
- (g) RBC has no confidence or trust in the Debtors' management to preserve and protect RBC's collateral.
- (h) The proposed interim receivership order is narrow in scope. The interim receiver's powers are only what is necessary to preserve and protect RBC's collateral that is

³¹ BDO Pre-Filing Report, para. 30.

³² BDO Pre-Filing Report, para. 22.

³³ BDO Pre-Filing Report, para. 33.

³⁴ Chohan Affidavit, paras. 63 to 65.

³⁵ Chohan Affidavit, para. 6 and BDO Pre-Filing Report at para. 17.

at risk and could be easily dissipated, namely the jewellery and other inventory, accounts, money and instruments, and books and records of the Debtors.

- (i) The proposed interim receivership order includes appropriate temporal restrictions and comeback orders.
 - (j) The potential prejudice to the Debtors is minimal as compared to the risks to RBC if an interim receiver is not appointed.
17. RBC submits that the evidence set out in the BDO Pre-Filing Report supports that an interim receiver is necessary for the protection of the interests of RBC, as a secured creditor is about to send a BIA Notice to the Debtors. It is also necessary for the protection of the Debtors' estates.

Without Notice Order is Appropriate

18. The Alberta Court of Appeal has emphasized that an *ex parte*, without notice interim receivership order should only be granted where the secured creditor has made "full, fair and candid disclosure of the facts."³⁶ That standard has unquestionably been met in the present case. RBC has provided complete and transparent disclosure, including the details of the security held, the debts owed to RBC, and the BC Receivership—an order which was obtained on notice.

Jurisdiction to Appoint a Receiver

19. This Court's authority to grant a receivership order is derived from, *inter alia*, the following statutory provisions:

- (a) Section 243(1) of the BIA, which provides:

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was

³⁶ [Royal Bank v. W. Got & Associates Electric Ltd., 1997 ABCA 136, para 12, \[TAB 5\]](#)

acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.³⁷

(b) Section 13(2) of the *Judicature Act*.

13 (2) An order in the nature of a mandamus or injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that the order should be made, and the order may be made either unconditionally or on any terms and conditions the Court thinks just.³⁸

20. The factors to consider in determining whether to appoint a receiver are set out in *Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Company*³⁹ ("**Paragon**"), a decision of the Honourable Justice Romaine of the Alberta Court of King's Bench. At paragraph 27 of *Paragon*, the Court highlighted the following relevant factors:

[27] The factors a court may consider in determining whether it is appropriate to appoint a receiver include the following:

- a) whether irreparable harm 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;
- b) the risk to the security holder 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;
- c) the nature of the property;
- d) the apprehended or actual waste of the debtor's assets;
- e) the preservation and protection of the property pending judicial resolution;
- f) the balance of convenience to the parties;

³⁷ [BIA, s. 243\(1\) \[TAB 1\]](#)

³⁸ [Judicature Act, RSA 2000, c J-2, s.13\(2\) \[TAB 6\]](#)

³⁹ [Paragon, paras 27-28 \[TAB 4\]](#)

- g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- 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) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- k) the effect of the order upon the parties;
- l) the conduct of the parties;
- m) the length of time that a receiver may be in place;
- n) the cost to the parties;
- o) the likelihood of maximizing return to the parties; and
- p) the goal of facilitating the duties of the receiver.

22. In applying these factors, Courts have held that the right of a secured creditor to apply for a receiver under a security agreement holds considerable weight and is a “strong factor” in support of granting a receivership order.⁴⁰

In cases where the security documentation provides for the appointment of a receiver, which is the case here with respect to the General Security Agreement and the Extension Agreement, the extraordinary nature of the remedy sought is less essential to the inquiry.

21. The approach of Justice Romaine in *Paragon* has been further confirmed by the Alberta Court of King’s Bench in *Kasten Energy Inc v Shamrock Oil & Gas Ltd* (“**Kasten**”)⁴¹ and the Ontario Superior Court of Justice in *RMB Australia Holdings Ltd v Seafield Resources Ltd*.⁴² In *Kasten* the Honourable Justice Lee held:⁴³

[21] The security documentation in the present case authorizes the appointment of a Receiver (GSA, para 8.2). Thus, even if I accept the argument that the Applicant *Kasten* has not been able to demonstrate irreparable harm, that itself

⁴⁰ [Maple Trade Finance Inc. v CY Oriental Holdings Ltd., 2009 BCSC 1527, para 25 \[TAB 7\]](#)

⁴¹ [Kasten Energy Inc. v Shamrock Oil & Gas Ltd, 2013 ABQB 63 \[Kasten\] \[TAB 8\]](#)

⁴² [RMB Australia Holdings Limited v Seafield Resources Ltd., 2014 ONSC 5205 \[RMB Australia\] \[TAB 9\]](#)

⁴³ [Kasten, para 21 \[TAB 8\]](#)

would not be determinative of whether or not a Receiver should be appointed in this matter. It is not essential for a creditor to establish irreparable harm if a receiver is not appointed: *Paragon Capital* at para 27.

22. In *RMB*, Justice Newbould cited with approval a decision of Justice Morawetz, as he then was, that held:⁴⁴

...while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.

23. The British Columbia Supreme Court also adopted this approach in *Canadian Imperial Bank of Commerce v Can-Pacific Farms Inc.*,⁴⁵ holding that the burden on an applicant seeking to appoint a receiver is relaxed where the parties have expressly contemplated the appointment of a receiver in their agreement. The Court in that case went further, stating that where the remedy is authorized by the security documentation, receivership orders are “granted as a matter of course” and receivers should be appointed as long as there are no “compelling commercial or other reasons why such an order ought not to be made.”⁴⁶
24. Courts have held that it was just and convenient to order the appointment of a receiver including because of the debtor’s breaches in failing to meet its ongoing contractual covenants.⁴⁷
25. In addition to the foregoing, the failure of a debtor to respond to repeated request by a lender for financial information that would address its concerns about the potential risk to its security has been considered a factor militating in favour of a receivership⁴⁸.

⁴⁴ *RMB Australia*, at para 21 [TAB 9] citing the decision of Justice Morawetz in *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866, at para 27 [TAB 10]; see also *Bank of Montreal v Sherco Properties Inc.*, 2013 ONSC 7023, para 42 [TAB 11].

⁴⁵ *Canadian Imperial Bank of Commerce v Can-Pacific Farms Inc.*, 2012 BCSC 437 [Can-Pacific Farms] [TAB 12]

⁴⁶ *Can-Pacific Farms Inc.*, para 14 [TAB 12]

⁴⁷ *Eaglewood Speciality Products et al. v Royal Bank et al.*, 2017 NBQB 136, at paras 3-7 and 9 [TAB 13]; *Bank of Montreal v Carnival National Leasing Ltd.*, 2011 ONSC 1007, at para 7-9 and 21 [TAB 14]

⁴⁸ *Prospera Credit Union v Portliving Farms (3624 Parkview) Investments Inc.*, 2021 BCSC 2449, para 36. [TAB 15]

26. In this case, RBC submits it is just and convenient to appoint BDO as Receiver of all the Debtors' assets, property and undertaking for the following reasons:
- (a) The Debtors are in default of the of the terms of their loan agreements;
 - (b) RBC is a first-ranking secured creditor of the Debtors, holding a security interest in all the present and after-acquired property of each of the Debtors and holding collateral mortgages over several commercial condominium units owned by Investments;⁴⁹
 - (c) it is an express term of the security agreements with each of the Debtors that, upon default, RBC is entitled to the appointment of a receiver;⁵⁰
 - (d) RBC has lost confidence in the Debtors' ability to repay the Indebtedness;
 - (e) RBC has urgent, material concerns about the status, stability and preservation of its collateral;
 - (f) Receivership proceedings provide the optimal court-supervised realization mechanic to account for the Debtors' assets and preserve value for stakeholders;
 - (g) A receivership process is needed to market and sell the Debtors' property in an open and transparent matter; and
 - (h) the balance of convenience supports the appointment of a receiver.

⁴⁹ Chohan Affidavit, paras. 17, 24, 26, and 29.

⁵⁰ Chohan Affidavit, paras. 16 and Exh. "L"; 23 and Exh. "Z"; 25 and Exh. "BB"; and 28 and Exh. "EE".

PART 5 – CONCLUSION AND RELIEF SOUGHT

27. For all the foregoing reasons, RBC asks this Honourable Court to:

- (a) grant an Order substantially in the form of the draft Interim Receivership Order on a without notice; and
- (b) grant an order appointing BDO as receiver of all of the Debtors' assets, property and undertaking in accordance with the draft form of Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th of March, 2025.

GOWLING WLG (CANADA) LLP

Per: 

Sam Gabor
Counsel for Royal Bank of Canada

PART 6 – TABLE OF AUTHORITIES

Tab	Authority
1.	<u><i>Bankruptcy and Insolvency Act</i>, RSC 1985, c B-3, ss 47(1), (3) and 243(1)</u>
2.	<u><i>Alberta Health Services v. Network Health Inc.</i>, 2010 ABQB 373</u>
3.	<u><i>Pandion Mine Finance Fund LP v. Otso Gold Corp.</i>, 2022 BCSC 136</u>
4.	<u><i>Paragon Capital Corporation Ltd. v. Merchants & Traders Assurance Co.</i>, 2002 ABQB 430</u>
5.	<u><i>Royal Bank v. W. Got & Associates Electric Ltd.</i>, 1997 ABCA 136</u>
6.	<u><i>Judicature Act</i>, RSA 2000, c J-2, s.13(2)</u>
7.	<u><i>Maple Trade Finance Inc. v CY Oriental Holdings Ltd.</i>, 2009 BCSC 1527</u>
8.	<u><i>Kasten Energy Inc. v Shamrock Oil & Gas Ltd</i>, 2013 ABQB 63</u>
9.	<u><i>RMB Australia Holdings Limited v Seafield Resources Ltd.</i>, 2014 ONSC 5205</u>
10.	<u><i>Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.</i>, 2013 ONSC 6866</u>
11.	<u><i>Bank of Montreal v Sherco Properties Inc.</i>, 2013 ONSC 7023</u>
12.	<u><i>Canadian Imperial Bank of Commerce v Can-Pacific Farms Inc</i>, 2012 BCSC 437</u>
13.	<u><i>Eaglewood Speciality Products et al. v Royal Bank et al.</i>, 2017 NBQB 136</u>
14.	<u><i>Bank of Montreal v Carnival National Leasing Ltd.</i>, 2011 ONSC 1007</u>
15.	<u><i>Prospera Credit Union v Portliving Farms (3624 Parkview) Investments Inc.</i>, 2021 BCSC 2449</u>