

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

1000502168 ONTARIO INC. operating as THE KIPPS MARKET

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED; AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS
AMENDED**

FACTUM OF THE APPLICANT

(Re: Receivership Application Returnable July 25, 2024)

July 12, 2024

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AND TO:	1000502168 ONTARIO INC. operating as The Kipps Market 103 College Street West Belleville, ON K8P 2G3 1722 Old Hwy 2 Belleville, ON K8N 4Z2
AND TO:	MANJOT KAUR GILL 6 Oliver Road Bx 37 Kaladar, ON K0H 1Z0
AND TO:	NARINDER GILL 1722 Old Hwy 2 Belleville, ON K8N 4Z2
AND TO:	PARVINDER SINGH BURN 28 Alice Street Eganville, ON K0J 1T0
AND TO:	CANACAP 250 Ferrand Drive, Suite 401 Toronto, ON M3C 3G8
AND TO:	ANITA GUPTA 4 Robert Speck Pkwy #360 Mississauga, ON L4Z 1S1
AND TO:	PRAVIN GUPTA 4 Robert Speck Pkwy #360 Mississauga, ON L4Z 1S1
AND TO:	CRA – TAX – ONTARIO Shawinigan-Sud National Verification and Collection Centre 4695 Shawinigan-Sud Blvd. Shawinigan-Sud, QC G9P 5H9

AND TO:	CANADA REVENUE AGENCY, LEGAL SERVICES 555 McKenzie Road Ottawa, ON K1A 0L5 Email: collections@justice.gc.ca
AND TO:	DEPARTMENT OF JUSTICE (CANADA) Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, Ontario M5H 1T1 Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca Kelly Smith Wayland Email: Kelly.SmithWayland@justice.gc.ca Kevin Dias Email: Kevin.Dias@justice.gc.ca Lawyers for Canada Revenue Agency
AND TO:	MINISTRY OF FINANCE – ON PST, EHT & OTHER TAXES Ministry of Revenue 33 King Street West, 6 th Floor Oshawa, ON L1H 8H5 Asta Alberry Fax: (905) 436-4524 Email: insolvency.unit@ontario.ca
AND TO:	HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE Insolvency Unit 6 th Floor, 33 King Street West Oshawa, Ontario L1H 8H5 Insolvency Unit Email: insolvency.unit@ontario.ca Tel: (905) 433-5657 Fax: (905) 436-4510

AND TO:	CITY OF BELLEVILLE – TAX DEPARTMENT 183 Pinnacle Street Belleville, ON K8N 3A5 Email: tax.info@belleville.ca
AND TO:	CITY OF BELLEVILLE / THE CORPORATION OF THE CITY OF BELLEVILLE 169 Front Street Belleville, ON K8N 2Y8

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PART I – INTRODUCTION

1. Small convenience stores were negatively impacted by COVID-19 and its aftermath. This application concerns another convenience store caught-up in that trend. After numerous defaults and missed loan payments, the Royal Bank of Canada (“**RBC**”) has decided that this receivership application is necessary for RBC and other stakeholders.

2. In particular, RBC brings this application for the appointment of BDO Canada Limited (“**BDO**”) as receiver (the “**Receiver**”) over all of the assets, property and undertakings of the Respondent (the “**Property**”) including all proceeds thereof and the real property known municipally as 103 College Street West, Belleville, Ontario (the “**Real Property**”) under section 243 of the *Bankruptcy and Insolvency Act* (the “**BIA**”)¹ and section 101 of the *Courts of Justice Act* (the “**CJA**”).²

¹ R.S.C., 1985, c.B-3.

² R.S.O. 1990, c. C. 43

3. All capitalized terms used but not defined in this factum shall have the meanings given to them in the Affidavit of Sharon D'Costa sworn June 26, 2024 (the "**D'Costa Affidavit**") for this application. Also, the facts set out in this factum are based on the D'Costa Affidavit.³

PART II – FACTS

4. The Respondent, 1000502168 Ontario Inc. c.o.b. as The Kipps Market, operates as a convenience store from the Real Property located in the City of Belleville. Manjot Kaur Gill and Narinder Gill are the principals and directors of the Respondent.⁴ They are also the Personal Guarantors.

5. As of May 16, 2024, the Respondent's total indebtedness to RBC was in the amount of \$939,200.02 (the "**Indebtedness**").⁵ The Respondent's obligations to, among other things, pay its Indebtedness to RBC arise under the Kipps Market Credit Agreements as a result of RBC's loans or credit facilities.⁶ The obligations are fully secured under RBC's Security including the Borrower's GSA and the Borrower's Mortgage over the Real Property.⁷

³ D'Costa Affidavit at paras. 4-34.

⁴ D'Costa Affidavit at paras. 8-9.

⁵ D'Costa Affidavit at para. 33.

⁶ D'Costa Affidavit at paras. 13, 17.

⁷ D'Costa Affidavit at paras. 18, 20.

6. The Respondent has defaulted under the Kipps Market Credit Agreements, and the defaults continue to date.⁸ The defaults include the failure to pay all outstanding amounts due under the Kipps Market Credit Agreements despite RBC's Demands.⁹

7. RBC is contractually entitled to the appointment of the Receiver pursuant to its Security.¹⁰

8. On May 21, 2024, RBC, through its counsel, delivered its Demands to the Respondent including a demand for payment of all amounts owing or outstanding under the Kipps Market Credit Agreements, and the Section 244 Notice.¹¹ RBC also delivered, by its lawyer, the Demands on the Personal Guarantors and the PPSA Notice on May 21, 2024.¹²

9. All statutory notice periods in relation to the Demands including the Section 244 Notice and PPSA Notice have expired, and the Respondent and Personal Guarantors have failed to repay their respective debt to RBC despite the Demands, which constitute a further default under the Kipps Market Credit Agreements.¹³

10. It is "just and convenient" to appoint a Receiver to preserve and realize on the Property of the Respondent including the Real Property; to distribute the net proceeds based on the priority position of any claimants; and for the benefit of the Respondent's stakeholders.

⁸ D'Costa Affidavit at para. 30.

⁹ D'Costa Affidavit at paras. 29-30.

¹⁰ D'Costa Affidavit at para. 34.

¹¹ D'Costa Affidavit at paras. 5, 30.

PART III – ISSUES AND THE LAW

11. The issue in this application is whether the Court should appoint BDO as Receiver over the Property of the Respondent, including the Real Property, pursuant to section 243 of the BIA and section 101 of the CJA.

i. The Technical Requirements for the Appointment of a Receiver are Met

12. RBC is a secured creditor of the Respondent and is thus entitled to bring an application under section 243 of the BIA.¹⁴

13. The Respondent is in breach of its obligations under the Kipps Market Credit Agreements. As a result of these breaches, the Respondent has defaulted under the Kipps Market Credit Agreements and Security. In accordance with the Borrower's Mortgage and the Borrower's GSA, the occurrence of an event of default grants RBC the right to seek the appointment of a receiver.¹⁵

14. As required by subsection 243(1.1) of the BIA, the Demands and Section 244 Notice were sent to the Respondent on May 21, 2024.¹⁶

15. In accordance with subsection 243(4) of the BIA, BDO is qualified to act as Receiver of the Respondent and has consented to act as Receiver.¹⁷

¹² D'Costa Affidavit at paras. 5, 30.

¹³ D'Costa Affidavit at paras. 6, 17.

¹⁴ BIA, s. 243; D'Costa Affidavit at paras. 18-30.

¹⁵ D'Costa Affidavit at paras. 24, 26.

¹⁶ BIA, ss. 243(1.1) and 244; D'Costa Affidavit at paras. 5, 29.

¹⁷ BIA, s. 243(4); D'Costa Affidavit at para. 40.

ii. Locality of the Respondent

16. Section 243(5) of the BIA requires that a receivership application be made to the court having jurisdiction in the “locality of the debtor”. Section 243 (5) states:

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.¹⁸

17. The term “locality of a debtor” is defined in section 2 of the BIA as follows:

“locality of a debtor” means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated.¹⁹

18. The Respondent has carried on business or resided during the year immediately preceding the commencement of this application in Ontario. The registered office of the

¹⁸ BIA, s. 243(5).

¹⁹ BIA, s. 2.

Respondent is in Belleville, Ontario and the Real Property is located in Belleville, Ontario.²⁰

19. Accordingly, the Respondent's locality is Ontario, and this application is properly brought before this Court. ²¹

iii. The Test for Appointing a Receiver under the BIA and CJA

20. Section 101 of the CJA permits the appointment of a receiver where it is “just and convenient”.²²

21. In addition, subsection 243(1) of the BIA provides that on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession over the assets of an insolvent person and exercise any control that the court considers advisable over that property and over the insolvent person's business; again where it is “just or convenient” to do so .²³

22. Section 2 of the BIA defines “insolvent person” as including a corporation that is for any reason unable to meet its obligations as they generally become due or that has ceased paying its current obligations in the ordinary course of business as they generally become due. The Respondent has defaulted under the Kipps Market Credit Agreements, failed to satisfy its obligations to RBC and not repaid the loans. The

²⁰ D'Costa Affidavit at paras. 8 and 20.

²¹ D'Costa Affidavit at paras. 8 and 20.

²² CJA, s.101.

²³ BIA, s.243(1)

Respondent is either unable or unwilling to satisfy these obligations and by definition under s. 2 of the BIA, the Respondent is an “insolvent person”.²⁴

23. In determining whether it is “just or convenient” to appoint a receiver under either the BIA or CJA, Ontario courts have applied the decision of Blair J. (as he then was) in *Bank of Nova Scotia v. Freure Village on Clair Creek*. In *Freure Village*, Blair J. set out that, in deciding whether the appointment of a receiver is just or convenient, the court “must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto,” which includes the rights of the secured creditor under its security.²⁵

24. Where the enumerated rights of the secured creditor under the credit agreement include the right to seek the appointment of a receiver, the burden on the applicant seeking the relief is relaxed. As stated by Morawetz J. (as he then was) in *Elleway*:

...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.²⁶

25. Where a creditor is entitled under its agreement with the debtor to seek the appointment of a receiver, a court will consider in its discretion whether, on an

²⁴ BIA, s. 2 (“insolvent person”); D’Costa Affidavit at paras. 29-37.

²⁵ [Bank of Nova Scotia v. Freure Village of Clair Creek](#), 1996 CanLII 8258 (ON SC) [“Freure Village”] at para. 11; [Elleway Acquisitions Limited v. The Cruise Professionals Limited](#), 2013 ONSC 6866 (CanLII) [“Elleway”] at para. 26.

examination of the surrounding circumstances, it is in the interests of all concerned to have the receiver appointed by the court.²⁷

26. Courts will also consider whether a court-appointed receiver (as opposed to a privately-appointed receiver) will allow the receiver to carry out its duties more efficiently. Other factors the court will consider when examining the surrounding circumstances include:

- (a) The potential costs of the receiver;
- (b) The relationship between the debtor and the creditors;
- (c) The likelihood of preserving and maximizing the return on the subject property;
- (d) The best way of facilitating the work and duties of the receiver;
- (e) The apprehended or actual waste of the debtor's assets;
- (f) The conduct of the parties; and
- (g) 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).²⁸

²⁶ *Elleway* at para. 27; [RMB Australia Holdings Limited v. Seafield Resources Ltd.](#), 2014 ONSC 5205 (CanLII) ["RMB"] at para. 28.

²⁷ *Freure Village* at para. 12; *RMB* at para. 28.

²⁸ *Freure Village* at para. 13; *Elleway* at para. 28; [Enterprise Cape Breton Corporation v. Crown Jewel Resort Ranch, Inc.](#), 2014 NSSC 128 (CanLII) at para.26.

iv. It is Just and Convenient to Appoint a Receiver over the Respondent

27. In addition to RBC's contractual rights, the appointment of the Receiver over the assets, property and undertaking of the Respondent, including the Real Property, is just and convenient for the following reasons²⁹, among other things:

- (a) The Demands, Section 244 Notice and PPSA Notice were issued and have expired, and the Respondent has still not paid the loans or Indebtedness to date;
- (b) The Respondent has generally been non-responsive to RBC's requests since February, 2024;
- (c) The Respondent has missed several monthly loan payments, not complied with the Reporting Requirements and failed to pay insurance premiums resulting in the temporary expiry of the insurance on the Real Property or Property until BDO arranged to pay the outstanding insurance premiums;
- (d) The Respondent has not provided BDO with certain requested information concerning the financial position of the business and the CRA priority payables;
- (e) More recently, the Respondent has advised RBC's lawyer that the convenience store may have been closed or not operating for a certain period of time for personal reasons;

²⁹ D'Costa Affidavit at paras. 29, 31, 32, 36, 37, 38.

(f) More recently, the Respondent has also acknowledged that it has missed monthly loan payments to RBC;

(g) Because of the Respondent's general non-responsiveness or "silence", RBC is unaware of the condition of the Real Property and whether it is being properly maintained. The recent notice from the insurer of the expiry of the insurance policy regarding the Real Property because of the non-payment of premiums by the Respondent is also concerning to RBC as the first mortgagee of the Real Property. The expiry or temporary expiry of the insurance policy may also be of concern to other stakeholders, including the Second Mortgagee and Third Mortgagee (as defined below). Absent the appointment of the Receiver, the state of the Real Property may degrade, which will negatively impact the value of RBC's Security and prejudice the interests of the Second Mortgagee and Third Mortgagee. Also, as noted above, there is some uncertainty regarding whether the business is operating or fully operating. The appointment of a Receiver is necessary to ensure that the Real Property is maintained until a sale can be arranged;

(h) The appointment of the Receiver is necessary in order to conclude a sale of the Real Property, and to apply the net proceeds to repay RBC and any other valid claims;

- (i) The draft Order sought in this receivership is based on the standard, model Order used in practice;
- (j) Subsequent charges or mortgages (in favour of Parvinder Singh Burn (the “**Second Mortgagee**”) in the principal amount of \$120,000 and Anita Gupta and Pravin Gupta (the “**Third Mortgagee**”) in the principal amount of approximately \$392,000³⁰) were registered on title to the Real Property;
- (k) Certain of the Respondent's assets - particularly the Real Property - have economic value;
- (l) A court-appointed receiver is required to take control of the Respondent's Property and particularly the Real Property, to realize the value of the Property, including the Real Property, for the benefit of the Respondent's stakeholders;
- (m) Other mortgagees and/or secured creditors of the Respondent, in addition to RBC, including the Second Mortgagee and Third Mortgagee, have an economic interest in the Property and/or Real Property; and
- (n) The amount of the Respondent's Indebtedness to RBC, of approximately \$940,000, is significant, and due and owing at present.

28. RBC is entitled to appoint a receiver in the event of default under the Borrower's Mortgage and the Borrower's GSA. Such an appointment is necessary to realize on the

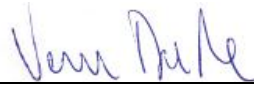
³⁰ D'Costa Affidavit at para. 28.

Respondent's assets - most importantly on the Real Property - in a fair and reasonable manner that balances the interests of the Respondent's stakeholders in a transparent and court-supervised process.

PART IV – ORDER REQUESTED

29. RBC respectfully requests an Order substantially in the form of the draft Receivership Order included in the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of July, 2024.



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SCHEDULE "A"
LIST OF AUTHORITIES

1. [Bank of Nova Scotia v. Freure Village of Clair Creek](#), 1996 CanLII 8258 (ON SC)
2. [Elleway Acquisitions Limited v. The Cruise Professionals Limited](#), 2013 ONSC 6866 (CanLII)
3. [RMB Australia Holdings Limited v. Seafield Resources Ltd.](#), 2014 ONSC 5205 (CanLII)
4. [Enterprise Cape Breton Corporation v. Crown Jewel Resort Ranch, Inc.](#), 2014 NSSC 128 (CanLII)

SCHEDULE "B"
RELEVANT STATUTES

Bankruptcy and Insolvency Act
R.S.C. 1985, c. B-3

Definitions

2. "locality of a debtor" means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

Court may appoint receiver

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 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.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

Definition of "receiver"

(2) Subject to subsections (3) and (4), in this Part, "receiver" means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of "receiver" — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition "receiver" in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of "disbursements"

(7) In subsection (6), "disbursements" does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance Notice

244. (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Courts of Justice Act
R.S.O. 1990, c. C-43

Injunctions and receivers

101.(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

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Court File No. CV-24-00096443-0000

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PROCEEDING COMMENCED AT
OTTAWA

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