ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: **CV-24-719261-00CL** **DATE:** **May 21, 2024**

NO. ON LIST: **2**

TITLE OF PROCEEDING: **ROYAL BANK OF CANADA v. COMMERCIAL PACKAGING SOLUTIONS INC. et al**

BEFORE JUSTICE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Alex MacFarlane Nick Hollard	Lawyers for the Applicant	amacfarlane@blg.com nhollard@blg.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Cameron J. Wetmore	Lawyers for the Respondents	cwetmore@srtslegal.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT:

[1] This is RBC's application for an order under subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) ("BIA") and section 101 of the *Courts of Justice Act* (Ontario) ("CJA") to appoint Grant Thornton Limited ("GT") as receiver and manager, without security, of all the assets, undertakings and properties (the "Property") of the respondents Commercial Packaging Solutions Inc. ("CPSI") and 2777463 Ontario Ltd. ("277") (collectively the "Debtors") including certain real property municipally known as 890 Dillingham Road in Pickering, Ontario.

[2] RBC's evidence, which is not particularly disputed by the respondents, is that in connection with various credit facilities extended by RBC, both CPSI and 277 are substantially indebted to RBC, at or above the limit of indebtedness permitted under those facilities. These facilities and loans by RBC are supported by various security instruments, some of which expressly provide that RBC may appoint a receiver or manager over the Debtors in the event of default.

[3] The Debtors have committed various acts of default under various of the agreements and instruments, and have acknowledged that they are unable to make certain payments due and owing.

[4] RBC is concerned that the Debtors are compromising RBC's security in respect of the indebtedness.

[5] In the circumstances, RBC delivered formal demands on the Debtors (and guarantors) several weeks ago, demanding immediate payment of the various debts, and giving notice of RBC's intention to enforce its security pursuant to s. 244 of the BIA.

[6] The parties were before Steele J. on May 7, 2024.

[7] It appears from the materials for that attendance that the Debtors, who as noted do not particularly dispute their indebtedness, their defaults, or RBC's right to enforce its security, were asking Her Honour for additional time to respond, and pointing in particular to a potential replacement lender with whom the Debtors were in discussions, the potential for a loan from a family member, and the potential to sell the 890 Dillingham Road property.

[8] Her Honour allowed the Debtors an initial adjournment (they were asking for 10 days) to explore these options and to continue discussions with RBC, on the basis that the matter would come back on in the near term (today's attendance before me).

[9] For purposes of today's attendance, the Debtors filed a further affidavit from their CEO Mr. Arutsothy dated May 13, 2024, (Mr. Arutsothy had previously sworn an affidavit dated May 7, 2024). The affidavit is provided to support the respondents' request for a further 10 day adjournment.

[10] In his May 13 affidavit, Mr. Arutsothy deposed that the Debtors had delivered material requested by RBC, and had entered into a term sheet with an alternate lender (a redacted copy of which was attached to the affidavit), which Mr. Arutsothy hoped would lead to a financing commitment by May 17, 2024.

[11] Mr. Arutsothy also provided as an exhibit to his May 13 affidavit, an updated Cash Flow for CPSI attesting to an expected increase in CPSI's revenues in the next few months, and deposed that a particular customer

"expects to increase its business to CPSI", and that there are indications of other potential new and increasing business.

[12] Mr. Arutsothy also deposed that he expects to receive something in the range of $700,000.00 from his parents as of July 15, 2024.

[13] Finally, Mr. Arutsothy deposed that CPSI has entered into a conditional agreement of purchase and sale to sell the 890 Dillingham property for over $10 million, the closing for which, assuming the conditions are met, could be as early as approximately 70 days from now.

[14] Mr. Arutsothy's affidavit also discusses other efforts to source alternative funding.

[15] In response to Mr. Arutsothy's affidavit, RBC delivered an affidavit from Jan Oros (who had earlier delivered an affidavit dated April 26, 2024).

[16] The Oros affidavit reviews certain events that had taken place following the attendance before Steele J. on May 7, and reviews the current indebtedness and the various efforts to which Mr. Arutsothy had deposed, that the Debtors were undertaking to address RBC's concerns and motion.

[17] In short, the Oros affidavit concludes that,

(a) the term sheet to which Mr. Arutsothy referred (and attached a redacted copy) would, if confirmed, yield financing that would be insufficient to satisfy the indebtedness owed to RBC and would leave a shortfall in the range of $750,000.000 plus professional costs;

(b) that there were various inaccuracies and other shortcomings in the May 13 Arutsothy affidavit.

[18] In his submissions, counsel for RBC reiterated some of these points, and noted that with respect to other potential sources of funding, including the funds from Mr. Arutsothy's parents, and the sale of the 890 Dillingham property, these items are conditional and uncertain, and in any event are at best several weeks down the road.

[19] The bottom line is that RBC is strongly opposed to a further 10-day adjournment (or any further adjournment). It notes that nothing has changed for the better since the adjournment granted by Steele J., and that as time passes RBC's security continues to degrade.

[20] I have concluded that it is just and convenient that RBC's motion be granted, and that GT be appointed as receiver over the assets, undertaking and property of the Debtors.

[21] In my view the respondents have had ample opportunity to address their indebtedness and RBC's concerns, and have not shown appreciable progress in that regard. While the Debtors point to potential sources of alternate funding, they really have nothing concrete to offer at this stage, and RBC should not be required to wait indefinitely in the hope that something more tangible will materialize.

[22] I am confident that GT will carefully assess the best means of maximizing value here, such that it is not a foregone conclusion that some or all of the respondents' employees will lose their positions.

[23] In addition, as is self-evident, if the sale of the 890 Dillingham property is concluded, and yields sufficient proceeds to pay out the indebtedness to RBC, that may yet provide an opportunity for the business to succeed as a going concern (if that is the wish and decision at that time).

[24] However, it is not reasonable for RBC to have to wait on that possibility, and so, again, I am granting the order it seeks.

JUSTICE W.D. BLACK

DATE: MAY 21, 2024