

District of: Ontario
Division No.: 09-Toronto
Court No.: BK-24-3038619-0031
Estate No.: 31-3038619

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

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

**RESPONDING MOTION RECORD
OF WAL-MART CANADA CORP.
Returnable April 15, 2024**

April 12, 2024

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Lawyers for Wal-Mart Canada Corp.

TO: SERVICE LIST

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

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

SERVICE LIST
(As at April 9, 2024)

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**RESPONDING MOTION RECORD
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I N D E X

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TAB 1

District of: Ontario
Division No.: 09-Toronto
Court No.: BK-24-3038619-0031
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**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE
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BRR LOGISTICS LIMITED

AFFIDAVIT OF NANCY THOMPSON

I, NANCY THOMPSON, of the City of Brampton, in the Regional Municipality of Peel, MAKE OATH AND SAY:

1. I am a law clerk in the employ of Blake, Cassels & Graydon LLP (“**Blakes**”), lawyers for Wal-Mart Canada Corp. (“**Walmart**”), and as such have knowledge of the matters hereinafter deposed to.
2. Attached hereto as **Exhibit “A”** is a true copy of the letter dated April 11, 2024 sent by Caitlin McIntyre of Blakes to the attention of Monica Faheim at Miller Thomson LLP.
3. This affidavit is sworn in response to the materials filed by BRR Logistics Limited for the motion scheduled for April 15, 2024 and for no other purpose.

SWORN BEFORE ME)
 in person OR by video conference)
 by Nancy Thompson of the City of Brampton,)
 in the Regional Municipality of Peel, before)
 me at the City of Burlington, in the Regional)
 Municipality of Halton, on April 12, 2024, in)
 accordance with O.Reg.431/20, Administering)
 Oath or Declaration Remotely)



A Commissioner for Taking Affidavits, etc.
Caitlin McIntyre, LSO #72306R



NANCY THOMPSON

This is **Exhibit "A"** referred to in the
Affidavit of Nancy Thompson
sworn before me by video conference
this 12th day of April, 2024



A Commissioner, etc.

Caitlin McIntyre, LSO #72306R



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April 11, 2024

VIA E-MAIL

Miller Thomson LLP

Attention: Monica Faheim

mfaheim@millertomson.com

RE: In the Matter of BRR Logistics Limited ("**BRR**") (Court File No. 31-3038619) and Wal-Mart Canada Corp. ("**Walmart**")

Dear Ms. Faheim:

We write in response to the Affidavit of Michael Wakefield sworn April 9, 2024 (the "**April 9 Wakefield Affidavit**") filed with the Court on April 9, 2024 and the statements made therein regarding the dispute between BRR and Walmart. As described below, the April 9 Wakefield Affidavit fundamentally misrepresents to the Court the status of the dispute and the conduct of Walmart throughout the dispute.

Capitalized terms not otherwise defined herein have the meanings given to them in my letter dated April 4, 2024 (the "**April 4 Letter**"). A copy of the April 4 Letter is attached hereto as **Exhibit "A"**, without exhibits.

As set out in the April 4 Letter, Walmart is committed to paying the amount that is determined to be properly owing to BRR. In an effort to establish the amount payable to BRR, in the April 4 Letter we set out in specific detail, including with substantiating evidence, (i) Walmart's position with respect to the Overpayment, and (ii) the outcome of Walmart's reconciliation process and its position with respect to each and every invoice submitted by BRR. To date, Walmart has received no response to the April 4 Letter. The April 4 Letter, and Walmart's considerable time and effort exerted to resolve this dispute consensually, were omitted from the April 9 Wakefield Affidavit. Instead, the April 9 Wakefield Affidavit alleges that "Walmart is trying to take advantage of the Company's financial challenges to avoid paying its bills." This allegation is false and inflammatory and appears to be designed to gain a tactical litigation advantage by unfairly disparaging Walmart in a public forum.

This tactic has been employed by BRR since the filing of the Affidavit of Michael Wakefield sworn February 23, 2024 wherein Mr. Wakefield states at paragraph 24 that "Walmart requested a discount on the pre-approved prices that it paid for the Company's supply" and "asserted that the discount should be "retroactive". No evidence has been provided to date to substantiate this baseless allegation, despite multiple requests being made for such evidence. Such spurious allegations designed to gain an advantage over Walmart are inappropriate and irresponsible.

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Also as set out in the April 4 Letter, in the course of the reconciliation process, Walmart identified a number of invoices that it did not dispute. These invoices, less applicable charges and fees that Walmart is contractually entitled to charge on such invoices, represent the amount that Walmart committed to pay BRR on March 20, 2024 before the Court. The total amount of the payment was ultimately \$419,580.95.

As set out in the email correspondence attached to the April 9 Wakefield Affidavit as Exhibit "C", BRR was advised that this payment would take 8-10 days to arrive. The payment ultimately arrived after 13 business days. The fact that the payment delivered was only \$394,295.13 only came to the attention of our instructing counsel upon service of the April 9 Wakefield Affidavit. The April 9 Wakefield Affidavit notes that it is "unclear" why Walmart issued a cheque in the wrong amount. We note that no explanation was sought prior to filing of the April 9 Wakefield Affidavit. A simple courtesy call could have resolved this matter.

Upon investigation, it became apparent that the discrepancy resulted from the application of an automatic cash discount applied to all invoices submitted by BRR. Walmart is entitled to make this discount in accordance with the contractual arrangements between the parties. Given that Walmart represented that it would pay \$419,580.95 and did not identify this cash discount for BRR, Walmart sent a wire transfer to Sallyport (rather than BRR, at your instruction) on April 10, 2024 to resolve the discrepancy.

Through the April 9 Wakefield Affidavit, BRR is attempting to selectively draw the Court's attention to certain aspects of the dispute between Walmart and BRR, while wholly excluding others, in an attempt to create a false narrative for the Court. At paragraph 24 of the April 9 Wakefield Affidavit, Mr. Wakefield includes a screenshot of the "Retail Link" portal reflecting a cheque issued for \$0. On top of entirely omitting the April 4 Letter, Mr. Wakefield has omitted that, on April 3, you wrote to me to inquire about this cheque. On April 4, I responded informing you that the financial team at Walmart input the incorrect number into the system initially when arranging for the release of funds, and that the reversal of this mistake resulted in the \$0 cheque. I verified that a total payment of \$419,580.95 was also released to BRR and that I would continue to follow up with my client for updates. I reiterated that Walmart was committed to paying \$419,580.95 to BRR in the April 4 Letter.

Lastly, BRR appears to be using Walmart's "Retail Link" portal to draw conclusions for the Court regarding Walmart's position. I make reference to paragraph 25(b) of the April 9 Wakefield Affidavit wherein Mr. Wakefield alleges that "Walmart unilaterally reduced the amount that appears as owing to BRR in the portal", and that Walmart has "manipulated" the Walmart system.

This is wholly inappropriate. The Retail Link portal is a financial tool used by both Walmart and its suppliers to generate and pay invoices. Point-in-time screenshots obtained from the Retail Link portal do not represent Walmart's position on the Alleged Receivable. Rather, Walmart's position on the Alleged Receivable is clearly described in the April 4 Letter which, as noted, was omitted from the April 9 Wakefield Affidavit.

We intend to bring the foregoing context to the attention of the Court in advance of the hearing on April 15, 2024. Based on this conduct, Walmart reserves all of its rights, including with respect to seeking appropriate costs against your client in light of the circumstances.

Blakes

Yours very truly,



Caitlin McIntyre

cc. Linc Rogers, *Blake, Cassels & Graydon LLP*
Gregory Azeff, *Miller Thomson LLP*
Ian Aversa & Matilda Lici, *Aird & Berlis LLP*
Brent Warga & John Fritz, *BDO Canada Limited*

EXHIBIT "A"



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caitlin.mcintyre@blakes.com

April 4, 2024

VIA E-MAIL

Miller Thomson LLP

Attention: Monica Faheim

mfaheim@millerthomson.com

RE: In the Matter of BRR Logistics Limited ("**BRR**") (Court File No. 31-3038619) and Wal-Mart Canada Corp. ("**Walmart**")

Dear Ms. Faheim:

We write in response to your letter dated March 27, 2024 (the "**March 27 BRR Letter**") and to provide an update on the reconciliation conducted by Walmart pertaining to the receivable BRR alleges is owing by Walmart (the "**Alleged Receivable**"). Capitalized terms not otherwise defined herein have the meanings given to them in my letter to you dated March 14, 2024.

As set out in greater detail below, Walmart has determined that a number of invoices submitted by BRR to Walmart are valid, subject to applicable charges and fees that were not included on such invoices, described in greater detail below (the "**Charges and Fees**"). Walmart has committed to pay the amount of such invoices to BRR, less the Overpayment and the Charges and Fees, with the total payment amounting to \$419,580.95.

The Overpayment

We have reviewed the March 27 BRR Letter. This letter did not respond to the outstanding information request first made by Walmart on February 23, 2024. To date, no evidence has been provided to support that Walmart is "attempting to unilaterally impose a discount on past purchases of products" as alleged in the Affidavit of Michael Wakefield sworn February 23, 2024 and sworn in support of the relief requested by BRR before the Court. We reiterate our request for any evidence you have to support this allegation.

In the March 27 BRR Letter, you state that after an agreement on pricing for a product was reached among Pazo Global and Walmart, a representative of BRR was advised by a representative of Pazo Global of the price to enter into the Walmart system. You state that BRR "simply did as it was directed". Please provide us with the direction from Pazo Global in or around May 2023 to enter the price into the Walmart system to support that BRR acted in accordance with its direction from Pazo Global.

In your March 27 BRR Letter you assert that Pazo Global is not BRR's agent and does not have authority to bind BRR. You then paradoxically confirm that the applicable price is the price that Pazo Global

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negotiates directly with Walmart, and subsequently directs BRR to charge Walmart. It is inarguably the case then, that the price agreed to by Pazo Global and Walmart is the price that Walmart should have been charged for the services rendered by BRR.

We would also like to correct your assertion that there was no error by BRR in respect of the product pricing. As illustrated by the November 22, 2023 correspondence attached to our March 14, 2024 letter as Exhibit "C", the instruction from Pazo Global to BRR to change the pricing in November 2023 was a result of a mistake, contrary to the agreement negotiated between Pazo Global and Walmart. When sending the cost change form to Walmart, Pazo Global apologizes for this mistake, indicating an acknowledgement that the previous pricing did not align with the agreement between Pazo Global and Walmart. Whether this error was on the part of Pazo Global in the direction it provided to BRR, or BRR in the method by which it entered the pricing, it is indisputable that the amount charged to Walmart by BRR between May 2023 and November 2023 was an error.

Furthermore, in the March 27 BRR Letter, you also state that "BRR made it clear to Walmart that the price change was not to be reflected on a retroactive basis as the error was not from BRR." This statement is, in and of itself, an acknowledgement that there was an error with respect to the price charged by BRR. Regardless of BRR's obligation to identify or report an error it may or may not have been aware of, it is unreasonable for BRR to expect to be unjustly enriched by what all parties agree was a mistake, regardless of whose mistake the Overpayment was based on or what alleged financial burden it might cause to BRR. BRR has not identified any legal basis upon which it is entitled to retain the Overpayment.

Lastly, the fact that the incorrect pricing entered into and accepted into the system went unnoticed from May 2023 to November 2023 is not disputed by Walmart. This is the very basis of the Overpayment. The fact that Walmart did not identify this mistake until November 2023 does not, however, make the pricing entered by BRR any less incorrect.

The Alleged Receivable

Attached hereto as **Exhibit "A"** is a copy of the spreadsheet provided by BRR to Walmart itemizing the Alleged Receivable. This spreadsheet has been edited by Walmart to reflect its position on each invoice. The invoices highlighted in green on this spreadsheet represent the invoices Walmart does not dispute are valid (subject to the Charges and Fees).

The invoices in white were previously paid by Walmart. Attached hereto as **Exhibit "B"** are the payment details for each of these invoices.

The invoices highlighted in purple appear to be invoices which BRR and Walmart agree are not owing and which are represented by a corresponding credit on the spreadsheet provided by BRR.

With respect to the invoices highlighted in red, Walmart has no record of these invoices or any of the services identified thereon being rendered.



There are two invoices highlighted in yellow with a notation next to them of “Dispute Owing” that relate to “cold storage services” provided by BRR to Walmart. Walmart disputes that these invoices are owing on the following basis:

1. Invoice 3751 – the services itemized on this invoice were never rendered. BRR is attempting to charge for “revenue surety” of a minimum volume amount that Walmart did not commit to. There is no contractual or other basis for BRR to charge Walmart for a minimum volume.
2. Invoice 4289 – Walmart’s position is that the total amount owing under this invoice should be \$11,050 and not \$51,140.02. This invoice relates to transportation costs from BRR to Walmart. Pursuant to the agreement arrived at in the correspondence attached hereto as **Exhibit “C”**, BRR was to invoice Walmart for transportation costs at a truck price of \$425/per load (\$425 x 26 loads = \$11,050). Instead, BRR invoiced Walmart by the amount of cases.

There are two additional invoices highlighted in yellow that Walmart disputes are owing on the following basis:

1. Invoice 3267 – this invoice is not for services rendered and is instead for “noncompliance and missed appointments.” BRR has no contractual or other entitlement to charge Walmart such fees. Walmart previously discussed this invoice with representatives of BRR in May 2023 and asked that this invoice be cancelled. Attached hereto as **Exhibit “D”** is a copy of this correspondence.
2. Invoice 4264 – this invoice is not for services rendered and is instead for “wait charges”, “reship charges” and another charge labelled “FSC”. The purchase order to which this invoice relates was never booked for delivery or delivered to Walmart. Furthermore, BRR has no contractual or other entitlement to charge Walmart the fees set out on this invoice.

Lastly, the spreadsheet submitted by BRR does not include the Charges and Fees Walmart is contractually entitled to charge BRR, including for non-compliance cost-recovery and missing or defective merchandise (please see “Compliance with Supplier Information Manual and Accounts Payable Supplier Reference Guide” on page 4, and section 6(c) of the Purchase Order terms and conditions on page 7 of the Supplier Agreements between Walmart and BRR). Attached hereto as **Exhibit “E”** is a spreadsheet setting out the Charges and Fees charged by Walmart with respect to the invoices. The invoice to which each Charge or Fee relates is identified in the column entitled “Reference”. These Charges and Fees have been deducted by Walmart from the Alleged Receivable.

Yours very truly,

Caitlin McIntyre

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(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**AFFIDAVIT OF NANCY THOMPSON
Sworn April 12, 2024**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

RESPONDING MOTION RECORD
OF WAL-MART CANADA CORP.
Returnable April 15, 2024

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