

Court File No. CV-24-00714666-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**ROYAL BANK OF CANADA**

Plaintiff

and

**1818216 ONTARIO INC., operating as RAVI KITCHEN and RAVI  
WRAPS AND SALADS, RAVI SOUPS AND WRAPS INC., 1865994  
ONTARIO INC. and THARMINI KANDASAMY**

Defendants

**FACTUM**

(Motion for an Order appointing Receiver  
Hearing Date: Wednesday, March 6, 2024, Via Video Conference)

March 5, 2023

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TO: **SERVICE LIST**

# FACTUM OF THE PLAINTIFF

## PART I - OVERVIEW

1. The Plaintiff, Royal Bank of Canada ("**RBC**"), is seeking to appoint BDO Canada Limited as receiver of 1818216 Ontario Inc. operating as Ravi Kitchen and Ravi Wraps and Salads (the "**Borrower**"), pursuant to section 243 of the *Bankruptcy and Insolvency Act* ("**BIA**") and section 101 of the *Courts of Justice Act*.

2. The Borrower has not served any responding materials.

## PART II - SUMMARY OF FACTS

### Parties

3. The Borrower owns the following real properties:

- (a) Unit 101 and Unit 102, 2855 Markham Road, Toronto, Ontario ("**Markham Road Property**"); and
- (b) Unit 17, 27 Coronet Road, Toronto, Ontario ("**Coronet Road Property**").

4. The Markham Road Property and the Coronet Road Property are collectively the "**Real Properties**".<sup>1</sup>

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<sup>1</sup> Affidavit of Angella White-Smith sworn February 15, 2024 ("**White-Smith Affidavit**"), para. 9.

## Credit Facilities and Security

5. Pursuant to a commitment letter agreement dated August 4, 2021, and accepted by the Borrower on August 22, 2021 (the “**Credit Agreement**”), RBC extended the following credit facilities to 181:

**Facility #1** \$713,771.89 non-revolving term facility (“**Term Facility 004**”)

**Facility #2** \$10,000.00 revolving demand facility available by way of overdraft

**Facility #3** \$562,074.52 non-revolving term facility (“**Term Facility 001**”)

**Other** Credit card to a maximum of \$10,000.00

**Other** All Canada Small Business Financing Loans outstanding at any time and from time to time<sup>2</sup>

6. Pursuant to section (a) of the "General Covenants" and the “Events of Default” section of the Credit Agreement, failure by the Borrower to pay any principal, interest or other amount when due constitutes default under the Credit Agreement.<sup>3</sup>

7. Pursuant to section (c) of the “General Covenants” and “Events of Default” sections of the Credit Agreement, the Borrower covenanted to pay or make provision for payment of all material taxes, including interest and penalties, and any failure to observe this covenant constitutes default under the Credit Agreement.<sup>4</sup>

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<sup>2</sup> White-Smith Affidavit, para. 14, Exhibit D.

<sup>3</sup> White-Smith Affidavit, para. 15.

<sup>4</sup> White-Smith Affidavit, para. 16.

8. Pursuant to section (j) of the “General Covenants” and “Events of Default” sections of the Credit Agreement, the Borrower covenanted not to grant any mortgage or charge against its properties without the prior written consent of RBC.<sup>5</sup>

9. Pursuant to a credit facilities agreement dated March 3, 2020 and accepted by the Borrower on March 3, 2020, including the CSBFL Standard Terms (the "**CSBFL Loan Agreement**"), RBC extended a \$200,000.00 non-revolving term facility to the Borrower (the "**CSBFL Loan**").<sup>6</sup>

10. Pursuant to section (a) of the "General Covenants" of the CSBFL Loan Agreement, failure by the Borrower to pay any principal, interest or other amount when due constitutes default under the CSBFL Loan Agreement.<sup>7</sup>

11. As further security for the credit facilities, the Borrower granted a Charge/Mortgage to RBC registered as Instrument No. AT5384071 on March 9, 2020, in the principal amount of \$572,000.00 in connection with the Coronet Road Property, including Standard Charge Terms No. 20015 (collectively the "**Coronet Road Property Charge**").<sup>8</sup>

12. As further security for the credit facilities, the Borrower granted a Charge/Mortgage to RBC registered as Instrument No. AT5552812 on October 22, 2020, in the principal amount of \$720,000.00 in connection with the Markham Road Property,

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<sup>5</sup> White-Smith Affidavit, para. 17.

<sup>6</sup> White-Smith Affidavit, para. 19.

<sup>7</sup> White-Smith Affidavit, paras. 20-21.

<sup>8</sup> White-Smith Affidavit, paras. 33, Exhibit J.

including Standard Charge Terms No. 20015 (collectively the “**Markham Road Property Charge**”).<sup>9</sup>

13. Pursuant to “Covenants Regarding Liabilities” section of the Standard Charge Terms No. 20015, the Chargor covenants to pay to the Chargee each and every amount, indebtedness, liability and obligation forming part of the Liabilities in the manner agreed to in respect of such amount, indebtedness, liability or obligation.<sup>10</sup>

14. Pursuant to “Covenants in Lieu of Statutory Covenants” section of the Standard Charge Terms No. 20015, the Chargor covenanted to pay taxes and other charges in connection with the Real Properties.<sup>11</sup>

15. Pursuant to the “Receivership” section of the Standard Charge Terms No. 20015, at any time and from time to time when there shall be default under the provisions of the Charge, the Chargee may appoint a receiver of the Coronet Road Property and the Markham Road Property (collectively the “**Charged Premises**”) and the rents and profits thereof.<sup>12</sup>

16. As security for the credit facilities, the Borrower granted RBC a general security agreement signed on February 14, 2019 (“**GSA**”).<sup>13</sup>

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<sup>9</sup> White-Smith Affidavit, paras. 34, Exhibit K.

<sup>10</sup> White-Smith Affidavit, para. 35.

<sup>11</sup> White-Smith Affidavit, para. 35.

<sup>12</sup> White-Smith Affidavit, para. 37.

<sup>13</sup> White-Smith Affidavit, para. 22, Exhibit F.

17. Pursuant to section 11(a) of the GSA, the nonpayment when due of any principal or interest forming part of the Indebtedness (as defined in the GSA) constitutes default under the GSA.<sup>14</sup>

18. Pursuant to section 11(e) of the GSA, if any Encumbrance (as defined in the GSA) becomes enforceable against the Collateral (as defined in the GSA), that constitutes a default under the GSA.<sup>15</sup>

19. Pursuant to section 11(f) of the GSA, the cessation of business operations constitutes default under the GSA.<sup>16</sup>

20. Pursuant to section 13 "Remedies" of the GSA, upon default, RBC is entitled to appoint a receiver.<sup>17</sup>

21. In support of the CSBFL Loan, the Borrower granted a Chattel Mortgage Security Agreement ("**CMSA**") signed on March 3, 2020.<sup>18</sup>

22. Pursuant to section (a) of the "Events of Default" of the CMSA, the nonpayment when due, whether by acceleration or otherwise, of any principal or interest forming part of the Indebtedness (as defined in the CMSA) constitutes a default under the CMSA.

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<sup>14</sup> White-Smith Affidavit, para. 26.

<sup>15</sup> White-Smith Affidavit, para. 27.

<sup>16</sup> White-Smith Affidavit, para. 28.

<sup>17</sup> White-Smith Affidavit, para. 29.

<sup>18</sup> White-Smith Affidavit, para. 30, Exhibit I.

23. The Coronet Road Property is legally described in PIN 76748-0019 (LT). The Markham Road Property is legally described in PIN's 76799-0001 (LT) and 76799-0002 (LT).<sup>19</sup>

24. The parcel register of the Coronet Road Property indicates:

- (a) RBC is the first mortgagee of the Coronet Road Property, pursuant to the first mortgage registered as Instrument No. AT5384071 on PIN 76748-0019 (LT) on March 9, 2020 in the principal amount of \$572,000.00;
- (b) Daljit Singh Banga is the second mortgagee of the Coronet Road Property, pursuant to the second mortgage registered as Instrument No. AT5499434 on August 19, 2020 in the principal amount of \$300,000.00;
- (c) Daljit Singh Banga also registered a Notice on title of the Coronet Road Property pursuant to Section 71 of the *Land Titles Act* as Instrument No. AT5798689 on July 14, 2021.<sup>20</sup>

25. The two parcel registers of the Markham Road Property indicate:

- (a) RBC is the first mortgagee of the Markham Road Property, pursuant to the first mortgage registered as Instrument No. AT5552812 on

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<sup>19</sup> White-Smith Affidavit, para. 42, Exhibit P.

<sup>20</sup> White-Smith Affidavit, para. 43, Exhibit P.

PIN's 76799-0001 (LT) and 76799-0002 (LT) on October 22, 2020 in the principal amount of \$720,000.00;

- (b) Rajinder Singh Pahal is the second mortgagee of the Markham Road Property, pursuant to the second mortgage registered as Instrument No. AT5853175 on PIN's 76799-0001 (LT) and 76799-0002 (LT) on September 8, 2021 in the principal amount of \$400,000.00;
- (c) His Majesty the King in Right of Canada as Represented by the Minister of National Revenue registered a tax lien on PIN 76799-0001 (LT) as Instrument No. AT6432851 on October 3, 2023;
- (d) His Majesty the King in Right of Canada as Represented by the Minister of National Revenue registered a tax lien on PIN 76799-0001 (LT) for excise taxes as Instrument No. AT6462949 on November 20, 2023 in the amount of \$96,967.00;
- (e) Toronto Standard Condominium Corporation No. 2799 registered on PIN's 76799-0001 (LT) and 76799-0002 (LT) as Instrument No. AT6469352 on November 30, 2023 a certificate of lien.<sup>21</sup>

26. Updated realty tax certificates for the Real Properties indicate arrears of \$57,861.77 as at February 12, 2024.<sup>22</sup>

### **Default and Transfer to SLAS**

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<sup>21</sup> White-Smith Affidavit, para. 44, Exhibit P.

<sup>22</sup> White-Smith Affidavit, para. 66.



27. On or around August 22, 2023, the accounts of the Borrower were transferred to the Special Loans and Advisory Services group of RBC ("**SLAS**") due to multiple breaches under the Credit Agreement and GSA, including but not limited to:

- (a) failure to pay municipal property taxes as they came due. As at September 19, 2023, the municipal tax arrears under both the Coronet Road Property and the Markham Road Property totalled \$54,815.51;
- (b) failure to obtain the prior written consent of RBC in connection with the Borrower granting second mortgages registered against title to the Real Properties; and
- (c) notice of sale proceedings commenced by the second mortgagee, Daljit Singh Banga, issued July 12, 2023 in connection with the Coronet Road Property for the sum of \$539,374.85 (the "**Coronet Road Property NOS**").<sup>23</sup>

28. On September 21, 2023, RBC issued payment demands and Notices of Intention to Enforce Security pursuant to section 244 of the BIA to the Borrower ("**NOI**").<sup>24</sup>

29. RBC's payment demand letters and NOI expired on October 2, 2023 and the indebtedness remains outstanding.<sup>25</sup>

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<sup>23</sup> White-Smith Affidavit, para. 46, Exhibit Q.

<sup>24</sup> White-Smith Affidavit, para. 48, Exhibit S.

<sup>25</sup> White-Smith Affidavit, para. 49.

30. Following the issuance of payment demand letters and NOI, the Borrower requested a forbearance agreement with RBC.<sup>26</sup>

31. From around October 5, 2023 to around December 15, 2023, attempts to finalize and execute a forbearance agreement were ultimately unsuccessful and the Borrower failed and/or refused to sign the forbearance agreement.<sup>27</sup>

32. Default under the credit and security documents continues, including the following further defaults:

- (a) failure to pay monthly payments due under Term Facility 004 since November 21, 2023;
- (b) failure to pay monthly payments due under Term Facility 001 since December 16, 2023;
- (c) failure to pay monthly payments due under CSBFL Loan since December 8, 2023;
- (d) on October 3, 2023, His Majesty the King in Right of Canada as Represented by the Minister of National Revenue registered on PIN 76799-0001 (LT) of the Markham Road Property as Instrument No. AT6432851 a lien pursuant to subsection 223(5) and (6) of the *Income Tax Act* in the amount of \$78,892.98;

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<sup>26</sup> White-Smith Affidavit, paras. 50.

<sup>27</sup> White-Smith Affidavit, paras. 51-57, Exhibits T and U.

- (e) on November 20, 2023, His Majesty the King in Right of Canada as Represented by the Minister of National Revenue registered a tax lien on PIN 76799-0001 (LT) of the Markham Road Property as Instrument No. AT6462949 a lien pursuant to subsection 316(4) and (5) of the *Excise Tax Act* in the amount of \$96,967.12;
- (f) on January 12, 2024, Toronto Standard Condominium Corp. No. 2799 issued a notice of sale ("**Markham Road Property NOS**") in connection with unpaid common expenses for the Markham Road Property and registered on title as Instrument No. AT6469352 on November 30, 2023 a certificate of lien. The Markham Road Property NOS is for the sum of \$12,353.58;
- (g) a site visit conducted by BDO Canada Limited on February 1, 2024, confirmed that the business operations of the Borrower from the Real Properties have ceased. A lockbox appears on the front door of the Coronet Road Property.<sup>28</sup>

33. Further, Daljit Singh Banga, the second mortgagee who issued the Coronet Road Property NOS, is expected to proceed with a motion for summary judgment against the Borrower regarding the possession of the Coronet Road Property.<sup>29</sup>

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<sup>28</sup> White-Smith Affidavit, paras. 58, Exhibits V, W and X.

<sup>29</sup> White-Smith Affidavit, paras. 59, Exhibit Y.

## PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

### *Nature of this Motion*

34. RBC, as secured creditor, seeks to appoint BDO Canada Limited as receiver of the Borrower.

### *The Test for Appointing a Receiver*

35. Pursuant to section [243\(1\) of the BIA](#) and [section 101 of the CJA](#), a court may appoint a receiver if it “is just and convenient” to do so.

36. In deciding whether or not to appoint a receiver, the court must have regard to all of the circumstances, including “the nature of the property and the rights and interests of all parties in relation thereto.” These include the rights of the secured creditor pursuant to its security.<sup>30</sup>

37. In *Sherco Properties*, Morawetz J. (as he then was) confirmed that where the security instrument provides for a right to appoint a receiver upon default, the burden on the applicant seeking to have the receiver appointed is relaxed:

“... 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

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<sup>30</sup> [Bank of Montreal v. Sherco Properties Inc., 2013 ONSC 7023 CanLII](#) (“*Sherco Properties*”) at para. 41 and [Bank of Montreal v. Carnival National Leasing Limited, 2011 ONSC 1007](#) (CanLII) at para. 24.

both parties. See *Textron Financial Canada Limited v. Chetwynd Motels Limited*, [2010 BCSC 477](#); *Freure Village, supra*; *Canadian Tire Corp. v. Healy*, [2011 ONSC 4616](#) and *Bank of Montreal v. Carnivale National Leasing Ltd. and Carnivale Automobile Ltd.*, [2011 ONSC 1007](#).<sup>31</sup>

38. In 2806401 Ontario Inc. o/a Allied Track Services Inc., Osborne J. stated at paragraph 13:

“Factors considered by courts when determining whether it is just or convenient to appoint a receiver include: the existence of a debt and a default, the quality of the security in issue, the fact that the creditor has a right to appoint a receiver under the loan documentation, the likelihood of maximizing the return to the parties, and the risk to the security holder, among others. [See, for example: *Central 1 Credit Union v. UM Financial Inc. and UM Capital Inc.*, [2011 ONSC 5612](#) (Commercial List) at para 22; *RMB Australia Holdings Limited v. Seafield Resources Ltd.*, [2014 ONSC 5205](#) (Commercial List) at para 28; *Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007 (Commercial List) at paras 24 and 27 [*Carnival Leasing*]; and *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, [2009 BCSC 1527](#) at para 25].”<sup>32</sup>

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<sup>31</sup> [Sherco Properties, para. 42](#).

<sup>32</sup> [2806401 Ontario Inc. o/a Allied Track Services Inc., 2022 ONSC 5509 CanLII](#) at para. 13.

39. Section 13 of the GSA and section 42 of the Charge each provides for the appointment of a receiver upon default.<sup>33</sup>

40. The Borrower has committed both monetary and non-monetary acts of default. RBC has provided the Borrower with more than sufficient time to remedy the defaults and the Borrower has failed and/or refused to do so. Not only did the Borrower fail to cure the defaults that entitled RBC to issue the payment demand letters and NOI, it committed further defaults since the expiry of payment demands.<sup>34</sup>

41. RBC has been accommodating and reasonable in providing the Borrower the opportunity to enter into a forbearance agreement. However, the Borrower failed to execute the forbearance agreement provided by RBC and failed to pay in full all indebtedness owing to RBC, despite being granted multiple extensions.<sup>35</sup>

42. RBC is concerned about its security given i) multiple failures to pay monthly payments when due under Term Facility 001, Term Facility 004 and CSBFL Loan, ii) nonpayment of realty taxes and condo fees, iii) enforcement proceedings by way of the Coronet Road Property NOS and the Markham Road Property NOS initiated by the creditors of the Borrower, iv) the tax liens registered pursuant to the *Income Tax Act* and the *Excise Tax Act* and iv) the cessation of business operations.<sup>36</sup>

43. It is clear that the Borrower has failed to comply with its contractual obligations owed to RBC. Justifiably, RBC has lost confidence in the Borrower.

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<sup>33</sup> White-Smith Affidavit, para. 61.

<sup>34</sup> White-Smith Affidavit, paras. 58 and 63.

<sup>35</sup> White-Smith Affidavit, para. 63.

<sup>36</sup> White-Smith Affidavit, paras. 63-66.

44. RBC has met the test for the appointment of a Receiver. RBC is a secured creditor. It is owed under the credit facilities in excess of \$1.3 million.

45. RBC respectfully submits that it is just and convenient to appoint BDO Canada Limited as receiver at this time for the following reasons:


- (a) the Borrower has demonstrated a serious failure to comply with its obligations under the Credit Agreement and Security, as evidenced by the numerous and ongoing monetary and non-monetary defaults;
- (b) the Borrower's actions have resulted in multiple Events of Default under the Credit Agreement and Security and the Events of Default still continue;
- (c) payment demands and the NOI to the Borrower has long since expired;
- (d) the indebtedness remains outstanding in full;
- (e) RBC has provided the Borrower with more than sufficient time to repay the indebtedness pursuant to the Credit Agreement;
- (f) no binding signed offer or agreement of purchase and sale has been delivered to RBC in connection with any of the Real Properties;
- (g) the receiver will be in a position to market and sell the Real Properties for the benefit of all stakeholders;
- (h) RBC has justifiably lost confidence in the Borrower; and

- (i) the terms of the GSA and Standard Charge Terms No. 20015 (which form part of the Coronet Road Property Charge and the Markham Road Property Charge) expressly permit the appointment of a receiver on default and the Borrower, Ravi Soups and 186 agreed to these contractual terms when they signed and delivered, as applicable, the GSA, the Coronet Road Property Charge and the Markham Road Property Charge to RBC in consideration of the credit facilities; and
  
- (j) BDO Canada Limited has consented to act as receiver.

**PART IV - ORDER REQUESTED**

46. It is respectfully requested that RBC be granted the relief sought in the Notice of Motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 5<sup>th</sup> day of March, 2024.



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Proceeding commenced at Toronto

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**FACTUM OF THE MOVING PARTY**

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