

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF EDMUNDSTON**

IN THE MATTER OF THE RECEIVERSHIP OF 655873 N.-B. INC., operating as RIVIÈRE-VERTE RITE STORE, carrying on business at 6 Industrielle Street, in the Village of Rivière-Verte, in the County of Madawaska and Province of New Brunswick;

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN: ROYAL BANK OF CANADA, a chartered bank,
Applicant,

**Reçu et Déposé
Received and Filed**

-and-

FEB 08 2017

**Cour du Banc de la Reine/
Court of Queen's Bench
Edmundston, N.B.**

**655873 N.-B. INC., operating as RIVIÈRE-VERTE
RITE STORE, carrying on business in the Village of
Rivière-Verte and Province of New Brunswick,**

Respondent.

RECEIVERSHIP ORDER

THIS motion, made by the **Royal Bank of Canada**, the moving party, for an Order pursuant to Section 33 of the *Judicature Act*, R.S.N.B. 1973, Ch. J-2, (the "**Judicature Act**"), Rule 41 of the *Rules of Court* of New Brunswick (the "**Rules**"), and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") supplementing the powers of **BDO Canada Limited** as receiver (in such capacities, the "**Receiver**") without security, to include the appointment of the Receiver as receiver of all of the assets, undertakings and properties of **655873 N.-B. Inc., operating as Rivière-Verte Rite Store**, (the "**Respondent**"), acquired for, or used in

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relation to a business carried on by the Respondent, was heard this day at the Edmundston Courthouse, at Carrefour Assomption, 121 de L'Église Street, in the City of Edmundston, County of Madawaska, Province of New Brunswick.

ON READING the affidavit of **Angella White**, sworn January 13, 2016, and the exhibits thereto, and the affidavit of **Angella White**, sworn May 5, 2016, and the exhibits thereto, and on reading the four reports of the Reciever filed herein and upon this matter coming on for hearing on February 7 and 8, 2017, and on hearing the submissions of counsel for the **Royal Bank of Canada**, and on reading the consent of **BDO Canada Limited** to continue to act as the Receiver.

AND ON HEARING the submissions of Daniel Johnson, president and director of the Respondent, and on hearing the comments of Claude Voyer, solely in his capacity as counsel to the Respondent in the preparation of mortgage documents with Capital Transit Inc. (herein, the "Alternate Lender").

AND ON BEING ADVISED of the consent of the Royal Bank of Canada and the Respondent.

AND ON THE COURT CONFIRMING that the Order of this Court made in these proceedings dated February 11, 2016, remains in full force and effect until further order of this Court.

IT IS ORDERED THAT:

APPOINTMENT AND CONFIRMATION OF PRIOR ORDER

1. Pursuant to section 33 of the *Judicature Act*, Rule 41 of the Rules and section 243(1) of the BIA, the appointment of the Receiver as set out in the order of this court dated February 11, 2016 (the "Initial Order"), is hereby continued, without security, as supplemented hereinafter and shall include appointing the Receiver as receiver of the all of the assets, undertakings and properties of the Respondent acquired for, or used in relation to a business carried on by the

Respondent, including all proceeds thereof (the "Property"). For greater certainty, paragraphs 3 to 9 inclusive of the Initial Order are hereby deemed restated and confirmed.

RECEIVER'S POWERS

2. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - a. to take possession and control of the Property and any proceeds or receipts arising from the Property but, while the Receiver is in possession of any of the Property, the Receiver must preserve and protect it;
 - b. to change locks and security codes, relocate all or some of the Property to safeguard it, engage independent security personnel, take physical inventories and place insurance coverage;
 - c. to manage, operate, and carry on the business of the Respondent, including the powers to enter into any agreements, incur and pay any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondent;
 - d. to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
 - e. to purchase or lease such machinery, equipment, inventories, supplies,

premises or other assets to continue the business of the Respondent, or any part or parts thereof;

- f. to receive and collect all monies and accounts now owed or hereafter owing to the Respondent and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent;
- g. to settle, extend or compromise any indebtedness owing to the Respondent;
- h. to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondent, for any purpose pursuant to this Order;
- i. to undertake environmental or workers' health and safety assessments of the Property and operations of the Respondent;
- j. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- k. to make payment of any and all costs, expenses and other amounts that the Receiver determines, in its sole discretion, are necessary or advisable to preserve, protect or maintain the Property, including, without limitation taxes, municipal taxes, insurance premiums, repair and maintenance costs, costs or charges related to security, management fees, and any costs and disbursements incurred by any manager appointed by the Receiver;

- l. to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- m. to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - i. without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$50,000; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under section 59 of the Personal Property Security Act (New Brunswick) shall not be required;
- n. to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- o. to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- p. to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- q. to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent;
- r. to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondent including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondent;
- s. to exercise any shareholder, partnership, joint venture or other rights which the Respondent may have; and
- t. to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondent, and without interference from any other Person.

NO EXERCISE OF RIGHTS OR REMEDIES

3. All rights and remedies of any individual, firm, corporation, governmental body or agency or any other entity against the Respondent, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Respondent to carry on any business which the Respondent is not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondent from compliance with statutory or regulatory

provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder provided that the Applicant shall not be required to file a defence to same as the further prosecution of any such claim is stayed except with the written consent of the Receiver, or leave of this Court.

PERSONAL PROPERTY LESSORS

4. All rights and remedies of any Person pursuant to any arrangement or agreement to which the Respondent is a party for the lease or other rental of personal property of any nature or kind are hereby restrained except with consent of the Receiver in writing or leave of this Court. The Receiver is authorized to return any Property which is subject to a lease from a third party to such Person on such terms and conditions as the Receiver, acting reasonably, considers appropriate and upon the Receiver being satisfied as to the interest of such Person in the applicable Property. The return of any item by the Receiver to a Person is without prejudice to the rights or claims of any other Person to the property returned or to an interest therein.

CONTINUATION OF SERVICES

5. All Persons having oral or written agreements with the Respondent or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondent, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Respondent's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal

prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Respondent or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

6. The Receiver, in its sole discretion, may (but shall not be obligated to) establish accounts or payment on delivery arrangements with suppliers in its name on behalf of the Respondent for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondent, or any of them, if the Receiver determines that the opening of such accounts is appropriate.
7. No creditor of the Respondent shall be under any obligation as a result this Order to advance or re-advance any monies or otherwise extend any credit to the Respondent.

RECEIVER TO HOLD FUNDS

8. All funds, monies, cheques, instruments, and other forms of payment received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

9. All employees of the Respondent shall remain the employees of the Respondent until such time as the Receiver, on the Respondent's behalf, may terminate the employment of such employees or they resign in accordance with their employment contracts. The Receiver shall not be liable as a result of this Order for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5), 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

10. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale") as permitted at law. Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. A prospective purchaser or bidder requesting the disclosure of personal information shall execute such documents to confirm the agreement of such Person to maintain the confidentiality of such information on terms acceptable to the Receiver. The purchaser of any Property shall be entitled to continue to use the personal information provided to it related to the Property purchased in a manner which is in all material respects identical to the permitted prior use of such

information by the Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

RECEIVER'S ACCOUNTS

11. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge to a maximum of \$150,000 (the "**Administrative Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and the Administrative Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
12. The Receiver and its legal counsel shall pass their respective accounts from time to time and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a Judge of the Court of Queen's Bench in New Brunswick in accordance with the Rules.
13. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees, expenses and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved in accordance with the the preceding paragraph hereof.

RECEIVER'S INDEMNITY CHARGE

14. The Receiver shall be entitled to and is hereby granted a charge (the "**Receiver's Indemnity Charge**") upon all of the Property as security for all of the

obligations incurred by the Receiver including obligations arising from or incident to the performance of its duties and functions under this Order including the management, operation and carrying on of all or part of the business of any of the Respondents, the BIA or otherwise, saving only liability arising from negligence or actionable misconduct of the Receiver.

15. The Receiver's Indemnity Charge shall form a second charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate in priority to the Administrative Charge.

ALLOCATION OF COSTS

16. The Receiver shall file with the Court for its approval a report setting out the costs, fees, expenses and liability of the Receiver giving rise to the Administrative Charge, the Receiver's Indemnity Charge and the Receiver's Borrowings Charge (as defined below) and, unless the Court orders otherwise, all such costs, fees, expenses and liability shall be paid in the following manner:
 - a. Firstly, applying the costs incurred in the receivership proceedings specifically attributable to an individual asset or group of assets against the realizations from such asset or group of assets;
 - b. Secondly, applying the costs pro rata against all of the assets based on the net realization from such asset or group of assets; and
 - c. Thirdly, applying non-specific costs incurred in the receivership proceedings *pro rata* against all of the assets based on the net realization from each asset or group of assets.

FUNDING OF THE RECEIVERSHIP

17. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of making payments (including interim payments) required or permitted to be made by this Order (including, without limitation, payments of amounts secured by the Administrative Charge and the Receiver's Indemnity Charge). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Indemnity Charge, the Administrative Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
18. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court on seven days notice to the Receiver and the Applicant.
19. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
20. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's

Certificates.

GENERAL

21. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
22. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondent.
23. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is hereby requested to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
24. The Receiver is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act in a representative capacity in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
25. Any interested party may apply to this Court to vary or amend this Order upon such notice required under the *Rules of the Court*, if any, or on such notice as this Court may order.
26. Any Person affected by this Order which did not receive notice in advance of the hearing of the initial application may apply to this Court to vary or amend

this Order within five (7) days of such Person being served with a copy of this Order.

27. In addition to the reports to be filed by the Receiver under the BIA or *New Brunswick Business Corporations Act*, on the application to the Court of any secured creditor, the Receiver shall file a report of its activities with the Court.
28. The Receiver shall not be discharged without notice to such secured creditors and other parties as the Court directs.

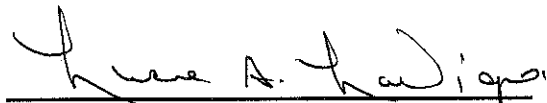
REFINANCING STAY

29. Notwithstanding anything contained in the foregoing paragraphs 1 to 28 of the within order and subject to the provisions below, the provisions of paragraphs 1 to 28 shall be stayed and suspended for a period of 60 days from the date hereof (the "Refinancing Stay") to permit the Respondent the opportunity to complete its proposed refinancing (the "Refinancing") with the Alternate Lender, provided the Respondent meets the following terms:
 - a. The Respondent shall pay the sum of \$200,000.00 to the moving party, Royal Bank of Canada ("RBC") on or before the date which is 30 days from the date of this order; and
 - b. The Respondent shall pay the balance of its indebtedness to RBC on or before the date which is 60 days from the date of this order.
30. In the event that either of the payments set out in the preceding paragraph are not made as and when due (and subject to the provisions of the succeeding paragraphs), then the Receiver shall file with the Court a Report certifying that the payment or payments have not been made as and when due. Upon the filing of such Report with the Clerk of the Court, the Refinancing Stay shall terminate, paragraphs 1 to 28 of this order shall become operative and the Receiver shall carry out the terms of this order.

31. In the event that counsel to the Alternate Lender advises the Receiver at any time that the Alternate Lender will not proceed with the Refinancing, the Receiver shall file with the Court a report certifying that the Alternate Lender has so advised the Receiver. Upon the filing of such report with the Clerk of the Court, the Refinancing Stay shall terminate, paragraphs 1 to 28 of this order shall become operative and the Receiver shall carry out the terms of this order. For greater certainty, this clause shall take effect regardless of whether the payment referred to in paragraph 29 (a) has been made.
32. In the event that counsel to the Alternate Lender advises the Receiver that, through no fault of the Respondent or the Alternate Lender, counsel to the Alternate Lender requires an extension of one or the other of the deadlines set out in paragraph 29 hereof in order to complete legal due diligence or other like steps in furtherance of the Refinancing, the Receiver shall file with the Court a report certifying that an extension of one or both of the deadlines is required, the reason such extension is required and the length of such extension (hereinafter an "Extension Report").
33. In the event the Receiver files an Extension Report, then the Refinancing Stay shall continue in effect until the earlier of the date on which counsel to the Alternate Lender advises the Receiver that the Alternate Lender will not proceed with the Refinancing or the expiration of one or the other of the deadlines as set out in the Extension Report. Upon the occurrence of any of the events set out in this paragraph, the Receiver shall file with the Court a Report certifying that default by the Respondent has occurred and describing the nature of the default. Upon the filing of such Report with the Clerk of the Court, the Refinancing Stay shall terminate, paragraphs 1 to 28 of this order shall become operative and the Receiver shall carry out the terms of this order.
34. In the event that the Respondent makes all such payments as set out herein in accordance with the deadlines set out herein (or in any applicable Extension Report), the Refinancing Stay shall continue in effect and the Receiver shall,

unless directed otherwise by the Court, by motion seek its discharge and the termination of the within Receivership. Upon such motion, the Receiver shall report to the Court on its activities, its costs and the payments made by the Respondent to RBC.

DATED at the City of Edmundston and Province of New Brunswick, this 8th day of February, 2017.



Justice of the Court of Queen's Bench
of New Brunswick

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties 655873 N.-B. Inc., operating as Rivière-Verte Rite Store, (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Court of Queens Bench of New Brunswick (the "**Court**") dated the ___ day of _____, 2016 (the "**Order**") made in an action having Court file number E-M-2-2016 has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded daily/monthly/not in advance/on the ___ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at _____, _____.

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Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

BDO Canada Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

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