



NO. S=237354
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

TEBO MILL INSTALLATIONS INC., TEBO MILL CONSTRUCTION INC.,
ALGON HOLDINGS INC., FRASERVIEW FABRICATION AND MACHINING INC.,
PTOLEMYTECH CONSULTANTS INC., ALANKARA KHARA, and JYOTI KHARA

DEFENDANTS

NOTICE OF APPLICATION

Name of applicant: Royal Bank of Canada ("RBC" or the "Applicant")

To: the defendants

And To: WS Leasing Ltd.

And To: Travelers Leasing Ltd.

TAKE NOTICE that an application will be made by the Applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on November 23, 2023 at 9:45AM for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order (the "**Receivership Order**") substantially in the form attached hereto as **Schedule "A"** appointing KPMG Inc. ("**KPMG**") as receiver, without security, of all assets, undertakings, and property of Tebo Mill Installations Inc. ("**Tebo Installations**"), Tebo Mill Construction Inc. ("**Tebo Construction**"), Algon Holdings Inc. ("**Algon**") Frasersview Fabrication and Machining Inc. ("**Fraserview**") and Ptolemytech Consultants Inc. ("**Ptolemytech**", and together with Tebo Installations, Tebo Construction, Algon and Frasersview, the "**Debtors**"), including all proceeds thereof (the "**Property**").
2. The assessed costs of and in connection with this application be awarded to RBC.

3. Such further and other relief as counsel may advise and this Court deems to be just and convenient in the circumstances.

Part 2: FACTUAL BASIS

Parties

4. RBC is a chartered bank of Canada with an address for service in this action only at 20th Floor, 250 Howe Street, Vancouver, British Columbia.
5. Each of the Debtors is a company incorporated pursuant to the laws of the Province of British Columbia, with an address at 3230 Baird Road, North Vancouver, BC, V7K 2G7.

Business

6. The Debtors, who collectively do business as the “TEBO Group”, carry on business as contractors specializing in infrastructure construction projects across various industries. The defendant, Alankara Khara, is the sole director of each of the Debtors, other than Ptolemytech. The defendant, Jyoti Khara, is the sole director of Ptolemytech.
7. While the TEBO Group is based in British Columbia, the majority of it’s current work is overseas.

Loan Documents

8. RBC is party to various credit agreements with certain Debtors, including (in relevant part):
 - (a) a credit agreement dated November 10, 2021, among Algon, as borrower, and RBC, as lender; and
 - (b) an amended and restated credit agreement dated July 20, 2022, among Tebo Installations, as borrower, and RBC, as lender,(collectively, the “**Credit Agreements**”) pursuant to which RBC provided certain credit facilities to those Debtors (the “**Credit Facilities**”).
9. Pursuant to various guarantees (collectively, the “**Guarantees**”), each of the Debtors has guaranteed certain debts, liabilities and obligations of the other Debtors to the Lender, including (in relevant part):
 - (a) the obligations of Algon to RBC have been guaranteed by each of the other Debtors, in each case up to a limit of \$5,000,000; and

- (b) the obligations of Tebo Installations to RBC have been guaranteed by each of the other Debtors, in each case up to a limit of \$3,600,000.

10. As at October 16, 2023:

- (a) Algon, as principal borrower, was indebted to RBC in the amount of \$3,893,743.61; and
- (b) Tebo Installations, as principal borrower, was indebted to RBC in the amount of \$1,648,200,

and as a result of the foregoing and pursuant to the Guarantees, the Debtors are indebted to RBC, jointly and severally, in the total amount of \$5,541,943.61, plus costs, expenses and interest as provided in the Credit Agreements and the Guarantees (the "**Indebtedness**").

Security

11. To secure their obligations to RBC, each of the Debtors has provided the following in favour of RBC (collectively, the "**Security**"), among other security:
- (a) a general security agreement, dated November 19, 2021, granted by Algon in favour of RBC;
 - (b) a general security agreement, dated July 20, 2022, granted by Tebo Installations in favour of RBC;
 - (c) a general security agreement, dated July 28, 2022, granted by Tebo Construction in favour of the Lender.
 - (d) a general security agreement, dated January 21, 2022, granted by Fraserview in favour of the Lender.
 - (e) a general security agreement, dated November 19, 2021, granted by Ptolemytech in favour of the Lender.

Default, Forbearance and Demand

12. In or around March, 2023, Algon and Tebo Installations were in default of the Credit Agreements, and the Bank had become concerned with financial performance of the Debtors.
13. In or around late April, 2023, the Debtors advised RBC that they were expecting to receive significant funds (the "**New Capital**") in connection with certain projects they were

pursuing or engaged on in Africa, which would be sufficient to allow the Debtors to repay the Indebtedness owed to RBC.

14. On or about May 26, 2023, in order to allow the Debtors time to complete any outstanding matters in connection with obtaining the New Capital, RBC entered into a forbearance agreement (the "**Forbearance Agreement**") with the Debtors, pursuant to which, *inter alia*,
 - (a) RBC agreed to forbear from demanding repayment of the Indebtedness or enforcing the security until June 30, 2023 (the "**Forbearance Period**");
 - (b) the Debtors agreed to the engagement of KPMG Inc. as consultant (the "**Consultant**") to review the affairs of the Debtors, and agreed to provide the Consultant with any information, documents or records it may request in connection with such review; and
 - (c) if RBC elected to commence proceedings to enforce the Security after the expiry of the Forbearance Period provided for therein, the Debtors irrevocably consented to the appointment of a receiver or receiver/manager over the assets charged by the Security.
15. The Debtors did not receive the New Capital by June 30, 2023, and had failed to provide the Consultant with cash flow projections, financial information, and other documentation that the Consultant had requested in connection with its review.
16. On or about July 11, 2023, the Bank issued demands to each of the Debtors (the "**Demands**").
17. Notwithstanding the Demands, RBC and the Consultant continued to discuss potential transactions with the Debtors which would allow for repayment of the Indebtedness, including pursuant to a confidential Financial Agreement (the "**Investment Agreement**") entered into with a confidential investor.
18. The Debtors advised RBC and the Consultant, *inter alia*, that the first tranche of funds contemplated by the Investment Agreement (being the sum of US\$17,000,000, herein the "**Initial Investment Funds**") was expected to arrive by the end of August, which would be used to repay the balance of the Indebtedness remaining at that time.
19. At this point, RBC had little confidence in the Debtors ability to complete any of the transactions they had described to the Bank. Nevertheless, given the short time frame within which the Debtors asserted funds would be available to repay the Indebtedness, RBC agreed to amend and extend the Forbearance Agreement.

20. On or about August 18, 2023, RBC and the Debtors entered into an amending forbearance agreement on, *inter alia*, the following terms:
- (a) the Forbearance Period would be extended to September 15, 2023 (the “**Extended Forbearance Period**”);
 - (b) the Debtors would make partial payments of the Indebtedness to RBC in the amount of:
 - (i) \$230,705.51, on or immediately prior to the date thereof; and
 - (ii) \$152,733.72, on or before August 31, 2023.
21. The Debtors failed to make the payment contemplated by paragraph 20(b)(ii). Moreover, by September 15, 2023, the Initial Investment Funds had not been received and RBC and the Consultant had still not received the majority of the financial information and records they had requested from the Debtors.
22. Since the expiry of the Extended Forbearance Period, the Debtors have provided RBC and the Consultant with several other potential transactions which they say would allow the Debtors to repay the Indebtedness. At this stage, however, RBC has no confidence in the Debtors ability to complete any of these transactions.

Part 3: LEGAL BASIS

23. The Applicant relies on:
- (a) *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), in particular s. 243;
 - (b) *Law and Equity Act*, R.S.B.C., 1996, c. 253 (the “**LEA**”), in particular s. 39;
 - (c) *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (the “**Rules**”); and
 - (d) Such further and other legal bases and authorities as counsel may advise and this Court may permit.

The Legal Test for Appointing a Receiver

24. Section 243(1) of the *BIA* provides that, 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 and 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.

BIA, s. 243(1).

25. Similarly, s. 39 of the *LEA* permit a court to appoint a receiver by interlocutory order if it "appears to the court to be just or convenient that the order should be made."

LEA, s. 39.

26. In *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, this Court identified several factors that may inform a holistic determination of whether it is "just and convenient" to appoint a receiver, including:

- (a) 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, particularly where the appointment of a receiver is authorized by the security documentation;
- (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;

- (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties; and
- (p) the goal of facilitating the duties of the receiver.

Maple Trade Finance Inc v. CY Oriental Holdings Ltd., 2009 BCSC 1527 at para. 25.

27. In applying these factors, this Court has held that the right of a secured creditor to appoint a receiver under a security agreement between the parties holds considerable weight and is a "strong factor" in support of granting a receivership order.

Maple Trade at para. 26

Prospera Credit Union v Portliving Farms (3624 Parkview) Investments Inc., 2021 BCSC 2449 at para 24.

Bank of Montreal v Gian's Business Centre Inc., 2016 BCSC 2348 at paras 33-36.

It is Just and Convenient to Appoint a Receiver in the Circumstances

28. It is just and convenient in the present circumstances to appoint a receiver over the Property on the terms sought by the Applicant for the following reasons:
- (a) the Applicant has a general and continuing security interest in all of the Debtors' property by virtue of the Security, which Security provides the Applicant with the right to appoint a receiver over the Property;
 - (b) the Debtors have defaulted under the Credit Agreements and Guarantees, these defaults entitle the Applicant to enforce its security, and pursuant to the

Forbearance Agreement the Debtors consent to enforcement by the appointment of a receiver;

- (c) the appointment of a receiver will protect the Applicant's interest by preservation and protection of the Property, and allow the receiver to access records and documents which have not been provided to date;
 - (d) there is a real risk of irreparable harm to the Applicant if a receiver is not appointed due to the risks to the Applicant's Security including, among other things, the fact that the majority of the Debtors' work is currently carried on overseas; and
 - (e) the Applicant has lost confidence in the Debtors' management and ability to repay the Indebtedness in full, as a result of the Debtors failing to complete any one of the various transactions put forward by the Debtors over the past seven (7) months.
29. For the above reasons, the Applicant submits that it is just and convenient that this Court appoint KPMG as receiver of the Property on the terms set out in the proposed Receivership Order.

PART 4: MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of Michael Wells, made October 20, 2023;
- 2. Affidavit #1 of Chelsea Denton, made October 20, 2023; and
- 3. Such further and other materials as counsel may advise and this Court may permit.

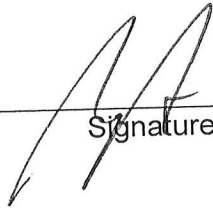
The Applicant estimates that the application will take 1 hour.

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days of service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 30 /OCT/2023



Signature of lawyer for filing party
Jordan Schultz

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms:

Date:	_____
	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts