

Clerk's stamp:

COURT FILE NUMBER

2203 12557

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

**EDMONTON**

PLAINTIFF

**ROYAL BANK OF CANADA**

DEFENDANTS

**FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD also known as FETOUN AHMED**

DOCUMENT

**AMENDED APPLICATION BY ROYAL BANK OF CANADA, PLAINTIFF**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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### **NOTICE TO RESPONDENT(S)**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date	<u>August 23, 2022</u>
Time	<u>10:00 a.m.</u>
Where	<u>Via Webex Hearing</u>
Before Whom	<u>The <u>Honourable D.R. Mah</u></u>

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. An Order abridging the time for service of this Application to the time actually given, or, alternatively and if necessary, leave to proceed with this Application on a without notice basis;
2. An Order, substantially in the form enclosed with this Application, appointing a Receiver or a Receiver and Manager over all of the undertakings, personal property, real property and assets of Faissal Mouhamad Professional Corporation (“**FMPC**”), 985842 Alberta Ltd. (“985”), 52 Wellness Centre Inc. (“52 Wellness”), Michael Dave Management Ltd. (“Michael Dave Ltd.”), 52 Dental Corporation (“52 Dental”), and Delta Dental Corp. (“Delta Corp.” and collectively with FMPC, 985, 52 Wellness, Michael Dave Ltd. and 52 Dental, the “**Debtors**”);
3. In the alternative, an Order appointing an interim receiver over the undertakings, real and personal property, and assets of the FMPC, Delta Corp., 52 Dental 985, 52 Wellness and Michael Dave Ltd.:
4. Such further and other orders as counsel may advise and as this Honourable Court may direct.

**Grounds for making this application:**

Background

5. FMPC, Delta Corp., 52 Dental, Mclvor Developments Ltd. (“**Mclvor**”), 985, 52 Wellness Michael Dave Ltd. and Paradise Mclvor Developments Ltd. (“Paradise Mclvor”) are each corporations incorporated pursuant to the laws of the Province of Alberta.
6. Faissal Mouhamad (“**Faissal**”) is an individual residing in or around the City of Red Deer, in the Province of Alberta, so far as RBC is aware, and is a licensed dentist with the Alberta Dental Association and College, and performs dental services in the Province of Alberta under the trade name “Delta Dental”.
7. Fetoun Ahmad, also known as Fetoun Ahmed (“**Fetoun**”) is an individual residing in or around the City of Red Deer, in the Province of Alberta, so far as RBC is aware. Faissal and Fetoun are married.
8. Faissal and FMPC operate a dental clinic in or around Red Deer, Alberta, under the trade name “Delta Dental” (the “**Business**”), and FMPC and Faissal are registered declarants of that trade name with the Corporate Registration System.
9. Mclvor owns bare land legally described as:

MERIDIAN 4 RANGE 29 TOWNSHIP 21  
SECTION 32  
THAT PORTION OF THE SOUTH WEST QUARTER  
WHICH LIES NORTH EAST OF ROAD PLAN 8210125  
CONTAINING 44.2 HECTARES (109.2 ACRES) MORE OF LESS  
EXCEPTING THEREOUT:

PLAN	NUMBER	HECTARES	ACRES-MORE OR LESS
ROAD	0210206	0.860	2.13

ROAD	0211040	3.66	9.04
SUBDIVISION	0211003	7.40	18.29
EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT TO WORK THE SAME			

(the “**Mclvor Lands**”).

Credit Facilities, Guarantees and Security

10. On the application of FMPC, Royal Bank of Canada (“**RBC**”) extended to FMPC certain credit facilities (the “**FMPC Credit Facilities**”) under certain loan documents (the “**FMPC Loan Documents**”).
11. As of August 10, 2022, the amount of indebtedness owing to RBC pursuant to the FMPC Credit Facilities was \$632,627.73, plus further interest thereon from and after August 10, 2022, plus all of RBC’s costs, including legal costs, on a solicitor and client full indemnity basis (the “**FMPC Direct Indebtedness**”).
12. Mclvor, 985, and Faissal each provided guarantees for the present and future indebtedness of FMPC to RBC including the FMPC Credit Facilities, up to a limited amount of \$3,250,000.00, plus costs and interest thereon (the “**FMPC Guarantees**”).
13. RBC advanced further credit facilities to Mclvor (the “**Mclvor Credit Facilities**”), and in connection therewith, Faissal, FMPC, 985, and Paradise Mclvor guaranteed the present and future indebtedness of Mclvor to RBC including the Mclvor Credit Facilities, up to the principal amount of \$2,500,000.00, plus interest and costs (the “**Mclvor Guarantees**”).
14. As of August 15, 2022, Mclvor is indebted to RBC with respect to the Mclvor Credit Facilities in the amount of \$2,504,407.54, plus further interest and costs (the “**Mclvor Direct Indebtedness**”).
15. To secure due payment and performance of all present and future indebtedness and liabilities of FMPC to RBC, FMPC granted to RBC the following:
  - (a) General Security Agreement dated May 16, 2012, granting a first-ranking security interest in favour of RBC against all of FMPC’s present and after-acquired personal property (the “**First FMPC GSA**”); and
  - (b) General Security Agreement dated August 19, 2016, granting a first-ranking security interest in favour of RBC against all of FMPC’s present and after-acquired personal property (the “**Second FMPC GSA**”).
16. To secure due payment and performance of all present and future indebtedness and liabilities of Mclvor to RBC, Mclvor granted to RBC the following:
  - (a) General Security Agreement – Floating Charge on Land dated August 12, 2016, granting a first-ranking, security interest in favour of RBC against all of Mclvor’s present and after-acquired personal property and a floating charge on land (the “**First Mclvor GSA**”);
  - (b) General Security Agreement dated August 9, 2016, granting a first-ranking, security interest in favour of RBC against all of Mclvor’s present and after-acquired personal property (the “**Second Mclvor GSA**”); and

- (c) A first-ranking Collateral Mortgage granted by Mclvor in favour of RBC, dated August 12, 2016, and registered against the Mclvor Lands, securing the principal amount of \$6,000,000.00, plus interest at the rate of RBC's prime interest rate in effect from time-to-time plus 5%, plus costs on a solicitor and client full indemnity basis (the "**Collateral Mortgage**").
17. To secure due payment and performance of all present and future indebtedness and liabilities of 985 to RBC, 985 granted to RBC the following:
- (a) General Security Agreement dated August 9, 2016, granting a first-ranking security interest in favour of RBC against all of 985's present and after-acquired personal property (the "**985 GSA**"); and
- (b) along with Bank of Montreal ("**BMO**"), a Priority Agreement dated August 12, 2016, whereby 985 and BMO agreed to subordinate and postpone any security interest granted by 985 to BMO to any security interest granted by 985 to RBC (the "**Priority Agreement**").
18. To secure due payment and performance of all present and future indebtedness and liabilities of Paradise Mclvor to RBC, Paradise Mclvor granted to RBC a General Security Agreement dated October 4, 2017 against all of its present and after-acquired personal property (the "**Paradise Mclvor GSA**").
19. The First FMPC GSA, the Second FMPC GSA, the First Mclvor GSA, the Second Mclvor GSA, the Collateral Mortgage, the 985 GSA, the Priority Agreement, and the Paradise Mclvor GSA are referred to collectively as the "**Security**".

#### Default and Demands

20. FMPC, Mclvor, 985 (the "**Original Corporate Debtors**"), and Faissal (Faissal, together with the Original Corporate Debtors are collectively referred to as the "**Original Debtors**") are in default of the FMPC Loan Documents, the Security, the FMPC Credit Facilities, and the FMPC Guarantees.
21. On or about July 28, 2022, RBC demanded payment of the FMPC Direct Indebtedness, with the exception of a Canada Emergency Business Account facility in the amount of \$60,000, and payment pursuant to the FMPC Guarantees, and served on the Original Debtors notices of intention to enforce security pursuant to s. 244 of the *Bankruptcy and Insolvency Act* ("**BIA**").
22. FMPC, 985, Mclvor, Paradise Mclvor, and Faissal are also in default of the Mclvor Loan Documents and the Mclvor Guarantees.
23. On or about August 15, 2022, RBC demanded payment from FMPC, 985, Mclvor, Paradise Mclvor, and Faissal of their respective liability of the Mclvor Direct Indebtedness, and the Mclvor Guarantees, and served therewith Notices of Intention to Enforce Security pursuant to s. 244 of the *BIA*, though as at the date of this Application, the demand and notice periods applicable to these demands has not expired.
24. To date, FMPC, 985, Mclvor, Paradise Mclvor, and Faissal have failed, neglected, or refused to pay the FMPC Direct Indebtedness and the Mclvor Direct Indebtedness to RBC.

#### Transfer of Property to 52 Dental, Delta Corp., 52 Wellness and Fetoun

25. Fetoun, Faissal's wife, is the sole director and voting shareholder of Delta Corp. and 52 Dental, though she is not licensed to practice dentistry in Alberta.
26. 52 Dental was incorporated on December 6, 2021.
27. 52 Wellness was incorporated on September 4, 2020 and Faissal is its sole director and shareholder.
28. Dental Corp. was originally incorporated by Faissal on August 28, 2017, and he was its sole director at that time. On December 14, 2021, Faissal personally changed the director and shareholder of Delta Corp. from himself to his wife Fetoun.
29. Faissal provides clinical services at a dental practice in Calgary under the banner "52 Dental" ("**52 Dental Calgary Clinic**") and 52 Wellness owns the building where 52 Dental Clinic Calgary operates.
30. Despite Delta Corp. and 52 Dental being owned by Fetoun, Faissal's wife, Faissal personally transferred Delta Corp. to his wife, removed himself as director and then replaced himself with his wife. Notwithstanding this, Faissal and FMPC still own the trade name "Delta Dental", Faissal has signing authority on Delta Corp.'s bank account, Faissal and FMPC are named as debtors on an Alberta Personal Property Registry registration respecting a security agreement given to CWB, along with Delta Corp. and 52 Dental while Fetoun is not, and Faissal solely owns and controls 52 Wellness which owns the building within which the 52 Dental Calgary Clinic operates.
31. RBC is concerned that aspects of the Business (the "**Transferred Property**"), secured to RBC, has been transferred to one or more of 52 Dental, Delta Corp., 52 Wellness, and Fetoun (the "**Transfer**"), including the operations of the Business and accounts receivable generated from the dental practice that are no longer being deposited into FMPC's bank account at RBC.
32. The Transfer of the Transferred Property is outside the ordinary course of business and without the prior written consent of RBC.
33. Neither 52 Dental, Delta Corp., 52 Wellness, nor Fetoun are parties to the Security and they have not guaranteed the FMPC Indebtedness or the Mclvor Direct Indebtedness to RBC.
34. RBC has added 52 Dental, Delta Corp., 52 Wellness, and Fetoun as additional debtors to its registrations made at the Alberta Personal Property Registry respecting FMPC.
35. RBC has lost confidence in FMPC and Faissal's ability to operate and manage the Business in accordance with the term and conditions of the Security, and in a manner not prejudicial to RBC.

#### Related Party Payments and Transfers

36. RBC has recently become aware that since 2020, FMPC and 985 have made numerous payments to entities and individuals related to them, as more particularly set out in the Affidavit of Jocelyn Beriault, sworn on August 19, 2022, and the Supplemental Affidavit of Jocelyn Beriault, sworn on September 9, 2022 including at least the sum of \$1,385,321.87 to Delta Corp. 52 Dental and 52 Wellness since January of 2021, payments by FMPC of at least \$1,383,135.23 to Faissal and Fetoun during the period of

2020-2022, and payments by 985 of at least \$209,621.54 to Faissal and Fetoun in 2020 and 2021.

37. Since 2020, RBC has identified multiple payments made to persons who, so far as RBC is aware, are not creditors of FMPC, but of Paradise Mclvor, Michael Dave Ltd., 985 and Faissal (the “**Jovica Creditors**”), as more particularly set out in the Affidavit of Jocelyn Beriault, sworn on August 19, 2022, and the Supplemental Affidavit of Jocelyn Beriault, sworn on September 9, 2022
38. 985 has covenanted and agreed not to grant a security interest over collateral secured to RBC without RBC’s consent. 985 has granted a security interest to some of the Jovica Creditors, and has made payments to these creditors totalling at least \$541,116.69 since 2020.
39. Such payments were made out of the ordinary course of business, for no or inadequate consideration to FMPC, and without the prior consent of RBC.
40. In addition, RBC has recently become aware that since 2020, FMPC and 985, under the direction and control of Faissal, have paid significant sums of money, secured to RBC, to family members and related corporations, for no obvious commercial purpose related to the Business, for no apparent consideration and without notice to RBC.
41. Further, RBC has recently become aware that much of the property that RBC believed to be owned by FMPC and secured by RBC has been transferred to, or is owned by, Michael Dave Ltd., a related entity owned by Faissal and which had not previously been disclosed.
42. RBC has lost further confidence in FMPC and Faissal’s ability to operate and manage the Business in accordance with the terms and conditions of the Security, and in a manner not prejudicial to RBC, as a result of these payments and transfers.
43. RBC has added Michael Dave Ltd. as an additional debtor to its registrations made at the Alberta Personal Property Registry respecting FMPC.

#### Litigation

44. On July 20, 2020, Mahmoud Mohamad (“**Mohamad**”), Faissal’s brother, commenced a lawsuit against Faissal, Mclvor, Michael Dave Ltd., FMPC and 985 (the “**Mohamad Action**”).
45. The Mohamad Action, alleged, among other things, that Mohamad is a beneficial owner of 50% of the issued and outstanding shares of Mclvor and that Mclvor holds 50% of the Mclvor Lands in trust for Mohamad, and further seeks damages in the amount of \$3,000,000.00.
46. Mohamad has filed a caveat and certificate of lis pendens against the Mclvor Lands claiming a trust in one half of the property and preventing the transfer of the Mclvor Lands to any party unless such transfer is subject to the caveat.
47. On September 24, 2021, Khaled Eissa, Faissal’s brother-in-law and Yusuf Mohamad Faissal’s brother, each commenced a lawsuit against Faissal, 985, Paradise Mclvor, ABC1 Corp., ABC2 Corp., John Doe and Jane Doe respecting a debt claim owed to each of Khaled and Yusuf.

48. On October 28, 2020, Investplus GP Ltd. commenced a lawsuit against Sarah Moe Professional Corporation (“**SMPC**”), 985, Sarah Moe who is Faissal’s sister, Michael Dave, John Doe, James Doe, Jacob Doe, Jane Doe, Janice Doe and Joan Doe (the “**SMPC Action**”) alleging that one or more of the defendants in the SMPC Action conspired to transfer of property belonging to SMPC to “Delta Dental” to avoid paying SMPC’s creditors.
49. RBC is concerned that the above referenced litigation is a risk to its security position.

#### The Proposed Sale of the Business and the Mclvor Lands

50. RBC has been presented with an Asset Purchase Agreement dated August 22, 2022 (the “**APA**”), made between Faissal, FMPC, and Michael Dave Ltd., as sellers, and Ghalib Hadi Professional Corporation (“**GHPC**”), as purchaser, pursuant to which GHPC has agreed to purchase substantially all of the assets of the Business.
51. RBC has also been presented with an Offer to Purchase and Interim Agreement dated November 17, 2021 (the “**OTP**”), pursuant to which Mclvor has agreed to sell the Mclvor Lands to Samer Altalaj for a purchase price of \$4,250,000.
52. RBC has concerns with the terms and the conditions of both the APA and the OTP, including the ability to close the transactions contemplated thereby, which includes Mclvor’s ability to complete the sale of the Mclvor lands due to the Mohamad Action.

#### Appointment of Receiver

53. Pursuant to the terms of the Security, RBC is entitled to the appointment of a receiver over the assets and property of, among others, FMPC and 985.
54. RBC amended its registrations of the Security at the Alberta Personal Property Registry upon learning that property of the Business had been transferred to Delta Dental, 52 Dental, 52 Wellness, Michael Dave Ltd. or Fetoun to add these parties as debtors.
55. Accordingly, property of the Business now in the hands of these parties remains subject to RBC’s security interest and the terms of Security, including the right to appoint a receiver as set out therein.
56. The FMPC Credit Facilities, excepting the CEBA loan, and the Mclvor Credit Facilities have been demanded upon. RBC has no visibility into its security position, and has lost confidence in management’s ability to manage the affairs of the Business.
57. RBC is concerned that its Security and collateral position has eroded by the fact that its Security has being transferred, out of the ordinary course of business, and without its consent to related parties, and is concerned that the accounts receivable of FMPC are being deposited at another financial institution into deposit accounts owned by Delta Corp.
58. RBC is alarmed that FMPC has transferred the sum of \$1,100,500.00 to Delta Corp. and 52 Dental in several tranches over the course of nine months and is concerned that the Delta Payments, the FMPC Jovica Payments, the 985 Jovica Payments and the numerous payments to related parties and family members, including those made by FMPC and 985 to Faissal and Fetoun, have eroded its Security and collateral position.

59. RBC is unsettled by the steps taken by Faissal to transfer Delta Corp. to his wife while remaining a material and necessary presence in its operations given his license to practice dentistry, and being a material and necessary presence in the viability of 52 Dental.
60. RBC is further unsettled by Faissal's failure to disclose his ownership of Michael Dave Ltd., and his position that Michael Dave Ltd., owns much of the property previously understood to be owned by FMPC.
61. In order to prevent the further transfer of assets and further erosion of RBC's collateral, and in order to obtain transparency of the operation of the Business, RBC seeks to appoint a Receiver over one or more of the corporate Defendants.
62. An orderly sales process of the assets of FMPC, 985, Michael Dave Ltd., 52 Wellness, Delta Corp., and 52 Dental is in the best interest of the stakeholders.
63. The various transfers of property and related party payments have created complexity and uncertainty regarding ownership interests in property secured to RBC, and the priority of competing creditors to such property. A Court supervised liquidation process is necessary to convey title to property owned by the Debtors, free and clear of such interests, and to determine the relative priorities of claims over such property.
64. The appointment of a receiver over FMPC, 985, Michael Dave Ltd., 52 Wellness, Delta Corp., and 52 Dental is both just and convenient in the circumstances.
65. In the alternative, RBC seeks the appointment of the interim receiver over FMPC, 985, Michael Dave Ltd., 52 Wellness, Delta Corp., and 52 Dental, as RBC's case is meritorious, RBC has demonstrated a *prima facie* case, RBC will suffer irreparable harm if an interim receiver is not appointed, and the balance of convenience favours the appointment of an interim receiver.
66. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Material or evidence to be relied on:**

67. Affidavit of Jocelyn Beriault sworn August 19, 2022, to be filed;
68. Supplemental Affidavit of Jocelyn Beriault sworn September 9, 2022;
69. Consent to Act as Receiver executed by MNP Ltd., to be filed;
70. Bench Brief in support of this Application, filed;
71. Statement of Claim; and
72. Such further and other materials and evidence as counsel may advise and this Honourable

**Applicable rules:**

73. Rule 1.2, 1.3, 1.4, 6.3 and 13.5 of the *Alberta Rules of Court*, Alta Reg 124/2010; and



74. Such further and other rules as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

75. Section 47 and 243 of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3.;
76. Section 13(2) of the *Judicature Act*, RSA 2000 c. J-2.;
77. Section 99 of the *Business Corporations Act*, RSA 2000, c B-9, s. 99.;
78. Sections 65(7) and 51 of the *Personal Property Security Act*, RSA 2000, c P-7; and
79. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

80. Not applicable.

**How the application is proposed to be heard or considered:**

81. Videoconference, on the commercial list.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.