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COURT OF QUEEN'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

**BRIEF OF ROYAL BANK OF CANADA**

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**BENCH BRIEF OF THE APPLICANT, ROYAL BANK OF CANADA**

**DATE OF HEARING: AUGUST 23, 2022**

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## I. INTRODUCTION

1. This brief is submitted on behalf of Royal Bank of Canada ("**RBC**") in support of its application to:
  - (a) appoint a receiver or receiver-manager over the undertakings, real and personal property, and assets of Faissal Mouhamad Professional Corporation ("**FMPC**"), 52 Dental Corporation ("**52 Dental**"), and Delta Dental Corp. ("**Delta Corp.**"); or
  - (b) in the alternative, appoint an interim receiver over the undertakings, real and personal property, and assets of the FMPC, Delta Corp., and 52 Dental.

2. Faissal Mouhamad ("**Faissal**") is a licensed dentist with the Alberta Dental Association and College (now the College of Dental Surgeons of Alberta), performing dental services in the Province of Alberta.

Affidavit of Jocelyn Beriault, sworn August 19, 2022 [the "**Beriault Affidavit**"] at para 12.

3. 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.

Beriault Affidavit at paras. 15 and 16.

4. Fetoun Ahmad, also known as Fetoun Ahmed ("**Fetoun**"), is married to Faissal, as far as RBC is aware, and is not a licensed dentist with the Alberta Dental Association and College (now the College of Dental Surgeons of Alberta).

Beriault Affidavit at paras 7 and 13.

5. RBC advanced various loans to FMPC, the outstanding indebtedness of which owing by FMPC to RBC is in excess of \$600,000.00.
6. FMPC also guaranteed certain loans advanced by RBC to Mclvor Developments Ltd. ("**Mclvor**"), and FMPC is further indebted to RBC for an amount in excess of \$2,500,000 pursuant to this guarantee.
7. FMPC has transferred, outside the ordinary course of business and without the consent of RBC, the Business, or a portion of the Business, to Delta Corp., including, without limitation, accounts receivable and business operations.

8. The frequency and quantum of deposits or credits coming into FMPC's deposit account has decreased significantly, as well as a significant decrease in payroll liabilities.
9. It appears as though one or more of Delta Corp. and 52 Dental are now operating at least part of the Business.
10. FMPC has made substantial payments to non-arm's length parties, including payments to Dental Corp. and 52 Dental, which are estimated by RBC to be in excess of, respectively, \$830,000.00 and \$270,500.00 from December 21, 2021.

Beriault Affidavit at para 71.

11. RBC has lost confidence in the ability of management to operate the Business in a candid and commercially reasonable manner, and in compliance with the covenants and obligations owed by FMPC.

Beriault Affidavit at para. 135.

12. RBC Submits that it is both just and convenient in these circumstances to grant RBC's application and to appoint a receiver-manager, or in the alternative, an interim receiver, over the undertakings, assets, and property of FMPC, Delta Corp., and 52 Dental.

## II. BRIEF SUMMARY OF FACTS

### A. Background

13. The Defendant, FMPC, is a corporation incorporated pursuant to the laws of Alberta. According to the Alberta Corporate Registry records, Faissal is the sole director and voting shareholder of FMPC.

Beriault Affidavit at para 4 .

14. The Defendant, Mclvor, is a corporation incorporated pursuant to the laws of Alberta. According to the Alberta Corporate Registry records, Faissal is the sole director and voting shareholder of Mclvor.

Beriault Affidavit at para 5.

15. The Defendant, 985842 Alberta Ltd. ("985"), is a corporation incorporated pursuant to the laws of Alberta. According to the Alberta Corporate Registry records, Faissal is the sole director and voting shareholder of 985.

Beriault Affidavit at para 6.

16. The Defendant, 52 Dental, is a corporation incorporated pursuant to the laws of Alberta, on December 6, 2021. According to the Alberta Corporate Registry records, Fetoun is the sole director and voting shareholder of 52 Dental. Fetoun is married to Faissal.

Beriault Affidavit at para 7.

17. The Defendant, Delta Corp. is a corporation incorporated pursuant to the laws of Alberta. According to the Alberta Corporate Registry records, Fetoun is the sole director and voting shareholder of Delta Corp.

Beriault Affidavit at para 8.

18. Delta Corp. was incorporated on August 28, 2017, was struck from the corporate registry on February 2, 2020, and was revived on May 18, 2021. On December 14, 2021, Faissal personally changed the shareholder and director of Delta Corp. from himself to Fetoun.

Beriault Affidavit at paras 40 and 41.

19. The Defendant, 52 Wellness, is a corporation incorporated pursuant to the laws of Alberta on September 4, 2020. According to the Alberta Corporate Registry records, Faissal is the sole director and shareholder of 52 Wellness.

Beriault Affidavit at para 9.

20. The Defendant, Paradise Mclvor Developments Ltd. ("**Paradise Mclvor**") is a corporation incorporated pursuant to the laws of Alberta. According to the Alberta Corporate Registry records, Faissal is the sole director and voting shareholder of Paradise Mclvor.

Beriault Affidavit at para 10.

21. The Defendant, Michael Dave Management Ltd. ("**Michael Dave Ltd.**") is a corporation incorporated pursuant to the laws of Alberta. According to the Alberta Corporate Registry records, Faissal is the sole director and voting shareholder of Michael Dave Ltd.

Beriault Affidavit at para 11.

22. 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").

Beriault Affidavit at para 19.

**B. Credit Facilities and Indebtedness**

23. On the application of FMPC, RBC extended to FMPC certain credit facilities (the "**FMPC Credit Facilities**") under certain loan documents (the "**FMPC Loan Documents**") as more thoroughly described in the Beriault Affidavit.

Beriault Affidavit at para 21.

24. As of August 10, 2022, the amount of indebtedness owing to RBC pursuant to the FMPC Credit Facilities was \$632,627.73, plus further amounts that may have been advanced by reason of the revolving nature of the FMPC Credit Facilities from and after August 10, 2022, 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**").

Beriault Affidavit at para 22.

25. RBC advanced further credit facilities to Mclvor (the "**Mclvor Credit Facilities**") pursuant to certain loan documents (the "**Mclvor Loan Documents**") as more thoroughly described in the Beriault Affidavit.

Beriault Affidavit at para 23.

26. 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, plus all additional amounts advanced to the Borrower by reason of the revolving nature of the Mclvor Credit Facilities, plus interest on such amounts, plus all of RBC's legal fees and costs incurred on a solicitor and own client full indemnity basis (the "**Mclvor Direct Indebtedness**").

Beriault Affidavit at para 23.

27. FMPC, Faissal, 985 and Paradise Mclvor guaranteed to RBC all indebtedness of Mclvor owing to RBC, including the Mclvor Direct Indebtedness, for up to the principal amount of \$2,500,000.00, plus interest and costs (collectively the "**Mclvor Guaranteed Indebtedness**").

Beriault Affidavit at para 24.

28. The FMPC Direct Indebtedness and the Mclvor Guaranteed Indebtedness are referred to collectively as the "**Indebtedness**".

### **C. The Guarantees of Indebtedness owing by FMPC**

29. Mclvor guaranteed payment of all of FMPC's obligations and liabilities to RBC (including the FMPC Direct Indebtedness), up to a limited amount of \$3,250,000.00, plus costs and interest thereon accruing from the date of demand (the "**Mclvor Guarantee**").

Beriault Affidavit at para 26(a).

30. 985 guaranteed payment of all of FMPC's obligations and liabilities to RBC (including the FMPC Direct Indebtedness), up to a limited amount of \$3,250,000.00, plus costs and interest thereon accruing from the date of demand (the "**985 Guarantee**").

Beriault Affidavit at para 26(b).

31. Faissal guaranteed payment of all of FMPC's obligations and liabilities to RBC (including the FMPC Direct Indebtedness), up to a limited amount of \$3,250,000.00, plus costs and interest thereon accruing from the date of demand (the "**Faissal Guarantee**").

Beriault Affidavit at para 26(c).

32. The Mclvor Guarantee, the 985 Guarantee, and the Faissal Guarantee are referred to collectively as the "**FMPC Guarantees**".

#### D. The Security

33. 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**").

Berault Affidavit at paras 28.

34. 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**").

Berault Affidavit at para 30.

35. 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**").

Berault Affidavit at para 33.

- 36. The First FMPC GSA, the Second FMPC GSA, the First Mclvor GSA, the Second Mclvor GSA, the Collateral Mortgage, the 985 GSA and the Priority Agreement are referred to collectively as the "**Security**".
- 37. The Security was also granted by each of FMPC, 985, Mclvor (the "**Original Corporate Debtors**") and together with Faissal the "**Original Debtors**"), and Faissal to secure to RBC indebtedness owing to RBC by Mclvor, including the Mclvor Direct Indebtedness, as well as the Mclvor Guaranteed Indebtedness.

Berault Affidavit at para 36.

- 38. Additionally, Paradise Mclvor granted to RBC a general security agreement dated October 4, 2017 whereby Paradise Mclvor granted a security interest in favour of RBC against all of Paradise Mclvor's present and after-acquired personal property (the "**Paradise Mclvor GSA**").

Berault Affidavit at para 36.

- 39. At all material times, the Security and the Paradise Mclvor GSA, as applicable, have been perfected by registration at the Alberta Personal Property Registry ("**APPR**"), and the Collateral Mortgage has been registered at the Alberta Land Titles Office against the Mclvor Lands.

Berault Affidavit at paras 29, 31, 32, and 34.

**E. Delta Corp., 52 Dental 52 Wellness and Faissal**

40. RBC is concerned with the relationship between FMPC and Faissal on the one hand, and Delta Corp., 52 Dental and 52 Wellness on the other.

41. 52 Dental was incorporated on December 6, 2021, and Fetoun, Faissal's wife, is the sole director and voting shareholder of 52 Dental. Fetoun, to RBC's knowledge, is not a dentist.

Beriault Affidavit at paras 37, 38, 43.

42. Delta Corp. was originally incorporated by Faissal on August 28, 2017, at which time he was its sole director, until it was struck from the Alberta Corporate Registry for failure to file annual returns on February 2, 2020. On May 18, 2021, Delta Corp. was revived by a solicitor and Faissal was registered as its sole director and shareholder at that time.

Beriault Affidavit at para 40.

43. On December 14, 2021, eight days after 52 Dental was incorporated, Faissal, as agent for Delta Corp., changed the director and shareholder of Delta Corp. from himself to his wife Fetoun.

Beriault Affidavit at para 41.

44. Despite not being a director or shareholder of Delta Corp., it appears that Faissal has signing authority for Delta Corp.'s bank account at Bank of Nova Scotia, and further, a security agreement was registered against 52 Dental, Delta Corp., Faissal and FMPC (as debtors) by CWB on April 26, 2022.

Beriault Affidavit at paras 44 and 45.

45. Regulated members of the Alberta Dental Association and College (now the College of Dental Surgeons of Alberta) are deemed, under the *Health Information Regulation*, Alta Reg 70/2001 ("**HIR**"), to be "custodians" of health information under the *Health Information Act*, RSA 2000, c H-5 ("**HIA**").

Section 1(1)(f)(ix) of the *HIA* [TAB 1]

Section 2(2) of the *HIR* [TAB 2]

46. To the best of RBC's knowledge, Fetoun is not a member of the Alberta Dental Association and College (or College of Dental Surgeons of Alberta), and is not permitted to act as a custodian of health information under the HIA.

Beriault Affidavit at para 43.

47. 52 Wellness was incorporated on September 4, 2020 and Faissal is its sole director and shareholder.

Beriault Affidavit at para 39.

48. There is a dental clinic operating under the name "52<sup>nd</sup> Dental" in Calgary located at Suite 100 - 3505 52<sup>nd</sup> Street, SE, Calgary Alberta ("**52 Dental Calgary Clinic**").

Beriault Affidavit at para 46.

49. The building where 52 Dental Calgary Clinic is located is owned by 52 Wellness (the "**52 Wellness Building**"), which building was transferred to 52 Wellness on November 25, 2021.

Beriault Affidavit at paras 47 and 48.

50. The following two caveats are registered against the Certificate of Title for the 52 Wellness Building on March 21, 2022, each respecting agreements charging lands:

- (a) A Caveat registered as Registration No. 221 059 533, which references a promissory note given to Ghalib Hadi ("**Hadi**") dated September 9, 2021 by 52 Wellness in the amount of \$385,000.00; and
- (b) A Caveat registered as Registration No. 221 059 534, which references a promissory note given to Faissal dated September 9, 2021 by 52 Wellness in the amount of \$700,000 (the "**Faissal Caveat**").

Beriault Affidavit at paras 48 and 49.

51. Based on the forgoing, the following conclusions can be reached:

- (a) 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;

- (b) Faissal and FMPC still own the trade name “Delta Dental”, although Fetoun is stated to be its director and shareholder;
- (c) Fetoun is not a licensed dentist and so far as RBC is aware, is not permitted to be a custodian of any patient records belonging to the Business or associated with the accounts receivable generated by performing dental services on patients;
- (d) Faissal has signing authority on Delta Corp.’s bank account;
- (e) Faissal and FMPC are named as debtors on an APPR registration respecting a security agreement, along with Delta Corp. and 52 Dental, while Fetoun is not; and
- (f) Faissal solely owns and controls 52 Wellness, which owns the building within which the 52 Dental Calgary Clinic operates.

**F. The Transfer of the Accounts Receivable and Operations to Delta Corp.**

- 52. RBC has become increasingly concerned that aspects of the Business, including, without limitation, accounts receivable and operations (the “**Transferred Property**”), are being transferred to and operated by one or more of 52 Dental, Delta Corp., 52 Wellness, and Fetoun (the “**Transfer**”).
- 53. It is a condition of the FMPC Loan Documents that FMPC must use a deposit account at RBC to operate the Business and has such an account at RBC (the “**FMPC Deposit Account**”).

Beriault Affidavit at para 52.

- 54. RBC initially determined that the frequency and quantum of deposits or credits coming into the FMPC Deposit Account significantly decreased in July of 2022, and further that FMPC’s payroll liability for July decreased by half. Later, on August 9, 2022, it was further determined that zero deposits made were made into the FMPC Deposit Account since August 5, 2022.

Beriault Affidavit at paras 57, 58, and 59.

- 55. To date, RBC has not been advised what financial institution the deposits have been diverted to, which is a breach of the FMPC Loan Documents.

Berault Affidavit at para. 60.

56. FMPC's counsel has advised that most, if not all, of the billing for the Business is now being done through Delta Corp. as opposed to FMPC.

Berault Affidavit at para. 63.

57. The FMPC Deposit Account and the FMPC Operating LOC are linked together, such that if the FMPC Deposit Account has a negative balance, or by reason of processing a payment, will have a negative balance, an amount sufficient to restore the FMPC Deposit Account to a positive balance will automatically be drawn from the FMPC LOC.

Berault Affidavit at para. 56.

58. As such, it is critical to RBC that FMPC deposit its accounts receivable generated by the dental clinic into the FMPC Deposit account to ensure the Operating LOC revolve as intended and agreed.

Berault Affidavit at para. 56.

59. FMPC's counsel has further advised that Faissal provides clinical services in both Red Deer and in Calgary, and that the Calgary clinic has been operational for several months. RBC believes that the Calgary clinic where Faissal performs dental services is the 52 Dental Calgary Clinic based upon the following:

- (a) Faissal has registered the Faissal Caveat against the Certificate of Title for the 52 Wellness Building where the clinic is located;
- (b) Faissal's wife Fetoun owns 52 dental; and
- (c) Faissal is the sole director and shareholder of 52 Wellness which owns the building that 52 Dental Calgary Clinic operates from.

Berault Affidavit at para. 59 and 61.

60. Each of FMPC, Mclvor, 985, and Paradise Mclvor have further covenant with and agreed with RBC to not sell, transfer, convey, lease or otherwise dispose of any of their properties or assets other than in the ordinary course of business and on commercially reasonable terms without the prior written consent of RBC.

Berault Affidavit at para 51.

61. RBC has not provided its written consent to the billing of the Business to be done through Delta Corp., nor has RBC provided its written consent to the transfer of the Business to any party. Further, RBC has not provided its written consent to the transfer of the accounts receivable to another financial institution or to Delta Corp. and has not provided its written consent to the change of ownership structure of the FMPC, 985, and McIvor, or in any way relating to the Business.

Beriault Affidavit at para 64.

62. Neither 52 Dental, Delta Corp., 52 Wellness, nor Fetoun are parties to the Security and they have not guaranteed the Indebtedness. RBC has added 52 Dental, Delta Corp., 52 Wellness, and Fetoun as additional debtors to its registrations made at the Alberta Personal Property Registry.

Beriault Affidavit at para 78.

63. RBC has lost confidence in Faissal's ability or willingness to operate and manage the Business in accordance with the term and conditions of the Security, and in a manner not prejudicial to RBC, as a result of the Transfer.

#### **G. Related Party Payments and Payments to Other Creditors**

64. RBC is also concerned about significant payments being made by FMPC from the FMPC Despot Account to related parties, creditors of related parties, and others.

##### **I. Payments from FMPC to Delta Corp. and 52 Dental**

65. Despite FMPC not being permitted to use the FMPC Credit Facilities for the benefit of or on behalf of any person other than FMPC, FMPC has paid at least the total sum of \$1,100,500.00 to Delta Corp. and 52 Dental in several tranches as follows:
- (a) the amount of \$830,000 was paid to Delta Corp., \$760,000 of which was paid in 2022 by way of 37 different cheques and \$70,000 of which was paid in December of 2021 by way of 3 separate cheques; and
  - (b) the amount of \$270,500 was paid to 52 Dental in 2022 by way of 23 cheques and one electronic transfer.

Beriault Affidavit at paras 65 and 71.

66. RBC is not aware of any goods or services provided to FMPC by Delta Corp. or 52 Dental, RBC was not advised by FMPC that it would be making the above noted payments, and RBC has not provided its written consent to these payments being made.

Beriault Affidavit at para 72.

II. Payments from FMPC and 985 to 52 Wellness

67. From 2020 to 2022, FMPC paid the total sum of \$93,373.25 to or for the benefit of 52 Wellness, and 985 paid the total sum of \$191,448.62 for the benefit of 52 Wellness in 2021.

Beriault Affidavit at paras 73 and 74.

68. Included within these payments to 52 Wellness, and as more particularly detailed in the Beriault Affidavit, it is believed that a payment of \$165,430.81 by 985 to 52 Wellness was paid by 985 for the benefit of 52 Wellness to enable it to purchase the building where the 52 Dental Calgary Clinic is currently operating.

Beriault Affidavit at paras 74 and 75.

69. RBC is not aware of any goods or services provided to FMPC or 985 by 52 Wellness, RBC was not advised by FMPC or 985 that they would be making these payments and RBC has not provided its written consent to these payments being made.

Beriault Affidavit at para. 76.

III. Payments to Other Creditors

70. FMPC, Mclvor, 985, and Paradise Mclvor have agreed not to grant, create, assume or suffer to exist any mortgage, charge, lien, pledge, security interest or other encumbrance effecting any of its properties, assets or other rights without the prior written consent of RBC in the Security.

Beriault Affidavit at para. 79.

71. As more particularly described in the Beriault Affidavit, RBC has identified the following payments made by FMPC to persons who are not secured creditors of FMPC (collectively the "**FMPC Jovica Payments**"), but are secured creditors of Paradise Mclvor, Michael Dave Ltd., and Faissal, including Jovica Property Management Ltd. ("**Jovica**"), Solar Star Holdings Inc. ("**Solar Star**"), and 1193770 Alberta Ltd. ("**119**").

Berault Affidavit at para. 80.

72. As more particularly described in the Berault Affidavit, RBC is also concerned about various payments made by 985 (collectively, the “**985 Jovica Payments**”), including to Jovica, Solar Star, 119, 1105550 Alberta Inc. (“**110**”), and 1245233 Alberta Inc. (“**124**”).

Berault Affidavit at para. 82.

73. RBC is concerned that:

- (a) the FMPC Jovica Payments were made by FMPC on behalf of one or more of Paradise Mclvor, Michael Dave Ltd. and Faissal, out of the ordinary course of business, and FMPC did not receive consideration for making the same;
- (b) RBC did not consent to FMPC making the FMPC Jovica Payments on behalf of Paradise Mclvor, Michael Dave Ltd. and Faissal, or at all;
- (c) Jovica, Solar Star and 119 are secured creditors of 985, and RBC did not provide its consent to 985 granting a security interest over its property to any of Jovica, Solar Star and 119;
- (d) the 985 Jovica Payments to 110 and 124 were made by 985 on behalf of one or more of Paradise Mclvor, Michael Dave Ltd. and Faissal, out of the ordinary course of business, and that 985 did not receive consideration for making the same; and
- (e) RBC did not consent to 985 making any of the 985 Jovica Payments on behalf of Paradise Mclvor, Michael Dave Ltd. and Faissal, or at all.

Berault Affidavit at paras. 81, 83, and 84.

#### IV. Payments to Other Creditors

74. As more particularly described in the Berault Affidavit, RBC is also concerned about significant payments by FMPC to various other related parties, including 985, Mclvor, Paradise Mclvor, Fetoun, Michael Dave, also known as Nasser Mohamad (“**Dave**”) who is Faissal’s brother, Euro Builders Inc. (“**Euro Builders**”), Yusuf Mohamad (“**Yusuf**”) who is Faissal’s brother, Khaled Eissa (“**Khaled**”) who is Faissal’s brother-in-law, and Mahmoud Mohamad (“**Mahmoud**”) who is Faissal’s brother.

Berault Affidavit at para. 85.



75. Dave is Faissal's brother and was the sole director of Euro Builders, which has been struck from the Alberta Corporate Registry since 2019.

Beriault Affidavit at para. 85(e).

76. RBC is concerned about the above noted payments since they are to non-arms' length parties, RBC is not aware of any goods or services provided to FMPC by any of 985, Mclvor, Fetoun, Dave, Euro Builders, Yusuf Khaled or Mahmoud, was not advised by FMPC that it would be making these payments and RBC has not provided its written consent to these payments being made.

Beriault Affidavit at para. 87.

77. As more particularly described in the Beriault Affidavit, RBC is also concerned about significant payments by 985 to various other related parties, including FMPC, MclVor, Paradise Mclvor, Fetoun, Khaled, Mahmoud and Mary Mohamad, who RBC believes is Mahmoud's daughter and Faissal's niece.

Beriault Affidavit at para. 88

78. RBC is concerned about the above noted payments since they are to non-arms' length parties, RBC is not aware of any goods or services provided to 985 by any of FMPC, Mclvor, Paradise Mclvor, Fetoun, Khaled, Mahmoud or Mary, was not advised by 985 that it would be making these payments and RBC has not provided its written consent to these payments being made.

Beriault Affidavit at para. 89

79. RBC is concerned that 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 and that these payments have eroded its security position.

Beriault Affidavit at para. 91

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

### I. Ghalib Hadi and the Offer to Purchase the Business

80. RBC's counsel has been presented with an Asset Purchase Agreement dated August 10, 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, on the closing date of December 21, 2022.

Beriault Affidavit at paras. 92 and 97

81. Hadi is the sole director and voting shareholder of GHPC, registered the Hadi Caveat against the 52 Wellness Building, and received payments from FMPC in the aggregate amount of \$291,270.36 since 2020. RBC is unaware of why such payments were made by FMPC to Hadi.

Beriault Affidavit at paras. 93, 94, 95, and 96.

82. RBC has various concerns with the APA, as more particularly detailed in the Beriault Affidavit, which have not yet been resolved, and as such, RBC is not supportive of the APA and does not provide its consent to the sale contemplated thereby.

Beriault Affidavit at paras 98 and 99.

### II. Samer Altalaj and the Offer to Purchase the Mclvor Lands

83. RBC has been provided with an Offer to Purchase and Interim Agreement dated in or around November 18, 2021 between Samer Altalaj ("**Samer**") as purchaser and Mclvor as vendor (the "**Mclvor Lands Offer**"), pursuant to which Samer has offered to purchase the Mclvor Lands for a purchase price that is sufficient to repay RBC in full.

Beriault Affidavit at paras 100 and 103.

84. Notwithstanding this, Mclvor is required to convey clear title to the Mclvor Lands, and to date has not been able to establish that it will be able to do so.

Beriault Affidavit at para 103.

85. On July 20, 2020, Mahmoud commenced a lawsuit against Faissal, Mclvor, Michael Dave Ltd., FMPC and 985 (the "**Mahmoud Action**") alleging, among other things that

Mohamad is a beneficial owner of 50% of the issued and outstanding shares of Mclvor and Mclvor holds 50% of the Mclvor Lands in trust for Mohamad, further details of which are contained in the Beriault Affidavit.

Beriault Affidavit at para 104.

86. Mahmoud has filed a caveat (the "**Mahmoud Caveat**") against the Certificate of Title for the Mclvor Lands, claiming a trust in one half of the Mclvor Lands, as well as a Certificate of Lis Pendens (the "**Mahmoud CLP**"), which prevent the transfer of the Mclvor Lands to any party unless such transfer is subject to the Mahmoud Caveat and the Mahmoud CLP.

Beriault Affidavit at paras 106 and 107.

87. Mclvor has extended its condition removal date twice since last November as it has been unable to discharge the Mahmoud Caveat and the Mahmoud CLP, and now has until September 30, 2022 to remove its condition to remove the Mahmoud Caveat and the Mahmoud CLP registered on the Certificate of Title to the Mclvor Lands.

Beriault Affidavit at para 108.

88. RBC has further identified a payment in the amount of \$24,000 made by FMPC to Samer, and a payment of \$8,060 by 985 to Samer both in 2020. RBC does not know the nature of the relationship between any of the Original Debtors and Samer or why FMPC and 985 have sent Samer money.

Beriault Affidavit at para 110.

89. RBC received an Exclusive Commercial Marketing Agreement between Mclvor and KDI Commercial Inc. dated September 9, 2020 (the "**Listing Agreement**") to sell the Mclvor Lands from Steve Seiler, who is named as a senior associate on the Listing Agreement.

Beriault Affidavit at para 102.

90. RBC has also identified a payment made to Steve Seiler personally by 985 in the amount of \$10,000 on September 30, 2020, which was made 21 days after the Listing Agreement was entered into.

Beriault Affidavit at para 111.

91. RBC does not know why 985 would pay Seiler personally and prior to the Mclvor Lands being sold when the listing agent is KDI Commercial Inc. and the commission on the sale is not payable until an accepted offer to purchase the Mclvor Lands is accepted, which did not happen until November 17th, 2021, 14 months after the payment to Seiler was made. RBC does not know what relationship Seiler has with the Original Debtors.

Beriault Affidavit at para 112.

92. RBC is concerned that Mclvor will be unable to close the Mclvor Lands Offer by the stated closing date for the following reasons:
- (a) the payments to Samer and Seiler detailed above and in the Beriault Affidavit;
  - (b) the pre-existing relationship of Samer with one or more of the Original Debtors which suggest that the transaction may not be arms' length;
  - (c) the long closing date contained in the Mclvor Lands Offer;
  - (d) the Mahmoud Action and the nature of the allegations therein; and
  - (e) the Mahmoud Caveat, the Mahmoud CLP, and several pending registrations that will need to be discharged in order for the Mclvor Lands Offer to close.

Beriault Affidavit at paras 113.

### **I. Additional Litigation Involving the Defendants**

93. In addition to the Mahmoud Action, RBC has become aware of two further actions that one or more of the Defendants are involved in, as set out below.
94. On September 24, 2021, Khaled and Yusuf commenced a lawsuit against Faissal, 985, Paradise Mclvor, ABC1 Corp., ABC2 Corp., John Doe and Jane Doe (the "**Khaled/Yusuf Action**").

Beriault Affidavit at para 115.

95. On October 28, 2020, Investplus GP Ltd. ("**Investplus**") commenced a lawsuit against Sarah Moe Professional Corporation ("**SMPC**"), 985, Sarah Moe ("**Sarah**"), Dave, John Doe, James Doe, Jacob Doe, Jane Doe, Janice Doe and Joan Doe (the "**Investplus Action**").

**J. Default and Demands**

96. The Original Debtors are in default of the FMPC Loan Documents and the Security, including, but are not limited to the following defaults:
- (a) failing to repay all amounts owing to RBC on demand;
  - (b) FMPC is not conducting its day-to-day banking at RBC;
  - (c) failing to immediately notify RBC of any event which constitutes or may constitute an event of default;
  - (d) FMPC failing to give RBC 30 days prior notice in writing of any intended change in the ownership structure of the Business and changing the ownership structure of the Business without the prior written consent of RBC;
  - (e) failing to deliver to RBC such information as RBC has requested;
  - (f) permitting a mortgage, charge, lien, pledge, security interest and other encumbrances to affect the property secured to RBC by the Security, as the case may be;
  - (g) FMPC has either sold, transferred, conveyed, leased or otherwise disposed of some of its property and assets out of the ordinary course of business and without the consent of RBC;
  - (h) FMPC has used the proceeds of the FMPC Operating LOC for the benefit or on behalf of several parties other than FMPC; and
  - (i) failing to notify RBC of all claims or litigation affecting FMPC, 985, Faissal and McIvor, or the collateral secured to RBC by the Security.

97. On or about July 28, 2022, RBC demanded payment of the FMPC Direct Indebtedness (excepting a Canada Emergency Business Account loan in the amount of \$60,000 (the “**CEBA Facility**”) and of amounts due under 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**”).

Beriault Affidavit at para 126.

98. RBC has demanded repayment from Mclvor of the Mclvor Direct Indebtedness, and has demanded repayment from each of FMPC, Faissal 985, and Paradise Mclvor of the Mclvor Guaranteed Indebtedness, and has issued to each of them notices of intention to enforce security pursuant to s. 244 of *BIA*, however as if the date of this Brief, the demand period pursuant to such demands and notices have not expired.

Beriault Affidavit at para 24.

99. On August 18, 2022, on instruction of RBC, a bailiff seized the equipment and inventory of the Business located at the Red Deer Location, and left the seized property on a Bailee's Undertaking. The accounts receivable of the Business were not seized.

Beriault Affidavit at para 127.

### III. ISSUES

100. The issues before the Court are:
- (a) is just or convenient to appoint a Receiver or Receiver and Manager over FMPC, Delta Corp., and 52 Dental in these circumstances?
  - (b) in the alternative, is just or convenient to appoint an Interim Receiver over FMPC, Delta Corp., and 52 Dental in these circumstances?

### IV. APPOINTMENT OF RECEIVER

#### A. Law

101. Each of sections 243 of the *BIA*, as amended, section 13(2) of the *Judicature Act*, RSA 2000 c. J-2, section 65(7) of the *Personal Property Security Act*, RSA 2000, c.P-7 ("*PPSA*") and section 99 of the *Business Corporations Act*, RSA 2000, c B-9 ("*BCA*") vest in this Honourable Court, authority to appoint a receiver where it is just or convenient to do so.

Section 243 of the *BIA* [TAB 3]

Section 13(2) of the *Judicature Act*, RSA 2000 c. J-2 [TAB 4]

Section 65(7) of the *PPSA* [TAB 5]

Section 99 of the *BCA* [TAB 6]

102. The test to appoint a receiver is whether it is just or convenient to do so in light of the circumstances.

*Servus Credit Union Ltd. v Proform Management Inc.*  
2020 ABQB 316 at para 65 [TAB 7]

103. A receivership is appropriate when it is required to protect the interests of a secured lender and when it is just or convenient, having considered and balanced the interest of the parties.

*Kasten Energy Inc. v Shamrock Oil & Gas Ltd.*,  
2013 ABQB 63, at para 21 [TAB 8]

104. Justice Romaine in *Paragon Capital Corp. v Merchants & Traders Assurance Co.* adopted the non-exhaustive list of factors enumerated by Frank Bennett in his text *Bennett on Receiverships* that ought to be considered on an application to appoint a receiver; the list includes:

- (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 rights of the parties thereto;
- (e) the apprehended or actual waste of the debtor's assets;
- (f) the preservation and protection of the property pending judicial resolution;
- (g) the balance of convenience to the parties;
- (h) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;

- (i) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- (j) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (k) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- (l) the effect of the order upon the parties;
- (m) the conduct of the parties;
- (n) the length of time that a receiver may be in place;
- (o) the cost to the parties;
- (p) the likelihood of maximizing return to the parties;
- (q) the goal of facilitating the duties of the receiver; and
- (r) the secured creditor's good faith, the commercial reasonableness of the proposed appointment, and any questions of equity.

*Paragon Capital Corp. v Merchants & Traders Assurance Co.*, 2002 ABQB 430 at para 27 ("**Paragon**")  
[TAB 9]

105. The Court has recognized that where a secured creditor applicant holds security that provides for the remedy of the appointment of a receiver, the extraordinary nature of an appointment of a receiver is less essential to the inquiry.

*Schendel Management Ltd. Re*, 2019 ABQB 545 at para 44 [TAB 11], *Paragon*, at para 28 [TAB 9]

### **B. Argument**

106. RBC respectfully submits that this Honourable Court ought to exercise its discretion to appoint a Receiver over the undertakings, property, and assets of FMPC, Delta Corp., and 52 Dental for the following reasons:

- (a) RBC is the first-ranking secured creditor of FMPC, holding a security interest in all of its present and after-acquired property;



Berault Affidavit at Exhibit N.

- (b) the Security granted by FMPC authorizes RBC to appoint a receiver or a receiver and manager over FMPC, 985, and McIvor upon default;

Berault Affidavit at para 130.

- (c) As a result of the Transfer, each of Dental Corp. and 52 Dental have received assets from FMPC that are subject to RBC's security interest under the Security;
- (d) RBC amended its registrations at the Alberta Personal Property Registry respecting the Security upon learning that property of the Business had been transferred to Delta Corp. and 52 Dental to add these parties as additional debtors. Accordingly, property of the Business now in the hands of these parties remains subject to RBC security interest and the terms of Security, including the right to appoint a receiver as set out therein.

*PPSA*, s. 51 [TAB 16]

- (e) RBC is concerned that its security and collateral position has eroded by the fact that its Security is 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 and with Delta Corp.;

Berault Affidavit at para. 131.

- (f) RBC is concerned that the Business, in whole or part, is being operated by Delta Corp. and 52 Dental, without its consent, and in breach of the Security;
- (g) RBC is concerned by the transfer of Delta Corp. to Fetoun by Faissal, while his involvement in its operations remains material and necessary, given his license to practice dentistry, and being a material and necessary presence in the viability of 52 Dental;

Berault Affidavit at para. 133.

- (h) 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.;

Berault Affidavit at para. 132.

- (i) 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 FMPC, and by reason of the unauthorized transfer of the accounts receivable and Business, Delta Corp. and 52 Dental;

Berriault Affidavit at para. 134.

- (j) An organized sale of the Business assets by a receiver is a cost effective means to realize on the assets of FMPC, 52 Dental, and Delta Corp., and to satisfy the Indebtedness;
- (k) An organized sale by a receiver is likely to maximize recovery for creditors;
- (l) FMPC has been unable to present an offer that is acceptable to RBC for the sale of the Business and the McIvor Lands, which would result in the repayment of the Indebtedness;
- (m) The balance of convenience is in favour of appointing a Receiver, given that:

- (i) FMPC has been unable to present an offer acceptable to RBC for the sale of the Business and the McIvor Lands, which would result in the repayment of the Indebtedness;
- (ii) the appointment of a receiver will provide oversight of the Business and the ability to monitor and review related party payments;
- (iii) RBC has no visibility into the current assets or financials of Delta Corp. and 52 Dental, who appear to be operating the Business or using property secured to RBC, in whole or part;
- (iv) significant payments have been made to related parties by FMPC, including Delta Corp. and 52 Dental; and
- (v) RBC has lost confidence in the ability of management to operate the Business in a candid and commercially reasonable manner, and in compliance with the covenants and obligations owed by FMPC, and by reason of the Transfer to Delta Corp. and 52 Dental;

Berriault Affidavit at para. 135.

- (n) A court appointment is necessary to enable the Receiver to carry out its duties effectively and efficiently;
- (o) A Receivership Order would place all creditors and stakeholders of FMPC, Delta Corp., and 52 Dental on a level and transparent playing field under the administration of this Honourable Court to ensure the consistent and lawful treatment of all stakeholders;
- (p) While there is a cost of appointing a Receiver, all indications to date suggest that the appointment of a Receiver will be the most cost effective means of dealing with the estate of FMPC, Delta Corp., and 52 Dental and reviewing the Transfer and payment by FMPC to related parties, including Delta Corp. and 52 Dental; and
- (q) RBC is acting in good faith and in a commercially reasonable manner in respect of the appointment of the Receiver.

107. Accordingly, RBC submits that it is just and convenient for the Court to appoint a receiver over the assets, property, and undertakings of FMPC, Delta Corp., and 52 Dental.

108. **APPOINTMENT OF INTERIM RECEIVER**

**C. Law**

109. Each of sections 47(1) of the *BIA*, section 99 of the *ABCA*, section 13(2) of the *Judicature Act*, and section 65(7) of the *PPSA* vest in this Honourable Court authority to appoint an interim receiver where it is just or convenient to do so.

Section 47 of the *BIA* [TAB 12]

Section 13(2) of the *Judicature Act*, RSA 2000 c. J-2 [TAB 4]

Section 65(7) of the *PPSA* [TAB 5]

Section 99 of the *BCA* [TAB 6]

110. Pursuant to s. 47 of the *BIA*, the Court will appoint an interim receiver where an applicant can demonstrate notice is about to be sent or was sent under subsection 244(1) of the *BIA* and it is shown to the Court to be necessary for the protection of:

- (a) the debtor's estate; or

(b) the interests of the creditor who sent the notice under subsection 244(1).

111. Under s. 47, there is no need for the applicant to produce evidence of actual and immediate danger of dissipation of assets to the detriment of the application creditors.

*CWB Maxium Financial Inc. v 2026998 Alberta Ltd.*,  
2020 ABCA 118 at paras 12-13 [TAB 13]

112. Under s. 13(2) of the *Judicature Act*, an applicant need only demonstrate that it is either “just or convenient” in the circumstances to grant an order for interim receivership with deference to the interlocutory injunctive relief test outlined in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 (“**RJR MacDonald**”).

*Murphy v Cahill*, 2013 ABQB 335, at para 60 [TAB 10]

113. Accordingly, the Court will apply the following test upon an application to appoint an interim receiver:

- (a) a preliminary assessment of the merits of the case to ensure that there is a serious issue to be tried;
- (b) whether the moving party would suffer “irreparable harm” if the motion is refused; and
- (c) the balance of convenience.

#### **D. Argument**

114. RBC submits that, in addition to satisfying the test to appoint an interim receiver under s. 47 of the *BIA*, which is sufficient grounds for this honourable Court grant such relief, the test for an interlocutory injunction in the form of an interim receivership order as articulated in *RJR-MacDonald* is also met in the circumstances.

115. The Court in *RJR-MacDonald* confirmed the tri-partite test originally articulated in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 SCR 110:

*Metropolitan Stores* adopted a three-stage test for courts to apply when considering an application for either a stay or an interlocutory injunction. First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on

the merits. It may be helpful to consider each aspect of the test and then apply it to the facts presented in these cases.

*RJR-MacDonald*, at para 48 [TAB 14]

***RBC's Case is Meritorious***

116. On or around July 28, 2022, RBC demanded payment from the Primary Obligors of their respective liability of the FMPC Direct Indebtedness (excepting the CEBA Facility) and served therewith Notices of Intention to Enforce Security pursuant to s. 244 of the *BIA*.

Beriault Affidavit at paras. 24 and 126.

117. The Court of Queen's Bench has held that a secured creditor who holds an instrument which provides for the appointment of a receiver, is *prima facie* entitled to that relief on proof of default.

*Murphy v Cahill*, 2013 ABQB 335 at para 72 [TAB 10]

118. RBC is a secured creditor, and the Security grants RBC the right to appoint a receiver upon default of FMPC. FMPC has committed multiple defaults and RBC has issued demands and Notices of Intention to Enforce Security. It is clear RBC has a meritorious case.

Beriault Affidavit at para 130.

119. With respect to Delta Corp. and 52 Dental, RBC submits that it has a *prima facie* case that the property and assets of the Business have been transferred to it, out of the ordinary course of business and without the consent of RBC.

***RBC Will Suffer Irreparable Harm if an Interim Receiver is Not Appointed***

120. The appointment of an interim receiver over FMPC, Delta Corp. and 52 Dental is necessary for the protection of RBC's interests.

121. RBC has demanded payment, and the entire Indebtedness is due and owing, and has not been paid.

Beriault Affidavit at para 129.

122. RBC is concerned that accounts receivable and operations of the Business have been transferred to Delta Corp. and 52 Dental, who are not parties to RBC's Security.

123. RBC has brought this Action against Delta Corp. and 52 Dental, among others, and has claimed that they received property subject to RBC's Security by way of a transfer out of the ordinary course business of the Business and without RBC's prior written consent, and a fraudulent preference or conveyance.
124. The Ontario Superior Court of Justice has recognized that in circumstances of "questionable intercorporate transfers" it can be just or convenient to appoint an interim receiver over related affiliates of debtors that are not subject to a secured creditor's security.

*Royal Bank v Canadian Print Music Distributors Inc.*  
2006 CarswellOnt 4119, paras 26-30 [TAB 15]

125. RBC amended its registrations of the Security at the Alberta Personal Property Registry upon learning that property of the Business had been transferred. Accordingly, property of the Business now in the hands of Delta Corp. and 52 Dental remains subject to RBC's security interest and the terms of Security.

*PPSA*, s. 51 [TAB 16]

126. FMPC has made significant payments to related parties, include Delta Corp. and 52 Dental, outside the ordinary course of business, which jeopardizes RBC's position.
127. Based on the foregoing, RBC submits that it is necessary to appoint an interim receiver over FMPC, Delta Corp., and 52 Dental to protect interests of RBC as it will suffer irreparable harm if its application is denied.

***The Balance of Convenience Favours the Appointment of an Interim Receiver***

128. RBC further submits that balance of convenience supports the appointment of a Receiver for the following reasons:
- (a) The appointment is necessary 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;
  - (b) FMPC has been unable to present an offer acceptable to RBC for the sale of the Business and the Mclvor Lands, which would result in the repayment of the Indebtedness;

- (c) RBC has lost confidence in management to operate FMPC, Delta Corp. and 52 Dental in a manner that does not prejudice RBC or dilute its security position; and
  - (d) the appointment of a receiver will allow the receiver to review transfers by FMPC to related parties to determine their bona fides.
129. For the reasons stated above, RBC submits that the balance of convenience favours the appointment of an interim receiver. A neutral court-appointed third party is required to protect the interests of RBC.
130. Accordingly, RBC submits that it has satisfied the tripartite test for interlocutory injunctive relief in the form of an interim receiver. Specifically, RBC has demonstrated a *prima facie* case; (2) RBC would suffer irreparable harm if an interim receivership is not granted; and (3) the balance of convenience favours RBC and the appointment of an interim receiver over FMPC, Delta Corp., and 52 Dental.

#### **V. SUMMARY AND RELIEF REQUESTED**

131. RBC respectfully submits that it is just and convenient:
- (a) to grant RBC's Receivership Application and appoint MNP Inc. ("**MNP**") as Receiver and Manager of FMPC, Delta Corp., and 52 Dental; or
  - (b) in the alternative, to grant RBC's Interim Receivership Application and appoint MNP as Interim Receiver of FMPC, Delta Corp., and 52 Dental.
132. MNP is a well-recognized and respected insolvency firm and is able to deal with the rights of all interested parties in a fair manner.
133. RBC is entitled to such remedy in the FMPC Credit Facilities, the Security, and the PPSA, and, on a balance of convenience, the facts favour RBC's Application for appointment of a receiver, or in the alternative, an interim receiver.
134. The appointment of the receiver and manager over FMPC, Delta Corp., and 52 Dental is likely to maximize the value of the assets and property of the Business, and to protect the interest of all stakeholders to ensure preservation of the Business and its assets and property.

135. In the alternative, the appointment of the interim receiver over FMPC, Delta Corp., and 52 Dental, is likely to protect the interest of all stakeholders to ensure preservation of the Business and its assets and property.
136. As such, RBC respectfully seeks an Order:
- (a) appointing MNP as Receiver and Manager over the property and undertakings of FMPC, Delta Corp., and 52 Dental; or
  - (b) in the alternative, appointing MNP as Interim Receiver over the property and undertakings of FMPC, Delta Corp., and 52 Dental.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19<sup>th</sup> DAY OF AUGUST, 2022**

**MILLER THOMSON LLP**

Per:



**Susy M. Trace  
Counsel for Royal Bank of  
Canada**



## TABLE OF AUTHORITIES

### TAB

1. *Health Information Act*, RSA 2000, s. 1(1)(f)(ix)
2. *Health Information Regulation*, Alta Reg 70/2001, s. 2(2)
3. *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, s. 243.
4. *Judicature Act*, RSA 2000 c. J-2, s. 13(2).
5. *Personal Property Security Act*, RSA 2000, c.P-7, s. 65(7).
6. *Business Corporations Act*, RSA 2000, c B-9, s. 99.
7. *Servus Credit Union Ltd. v Proform Management Inc.* 2020 ABQB 316, 2020 CarswellAlta 903.
8. *Kasten Energy Inc. v Shamrock Oil & Gas Ltd.*, 2013 ABQB 63, 2013 CarswellAlta 153.
9. *Paragon Capital Corp. v Merchants & Traders Assurance Co.*, 2002 ABQB 430, 2002 CarswellAlta 1531.
10. *Murphy v Cahill*, 2013 ABQB 335, 2013 CarswellAlta 1490.
11. *Schendel Management Ltd., Re*, 2019 ABQB 545, 2019 CarswellAlta 1457.
12. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 47.
13. *CWB Maxium Financial Inc. v 2026998 Alberta Ltd.*, 2020 ABCA 118, 2020 CarswellAlta 513.
14. *RJR-MacDonald Inc. v Canada (Attorney General)* 1994 SCC 117, 1994 CarswellQue 120F.
15. *Royal Bank v Canadian Print Music Distributors Inc.*, 2006 CarswellOnt 4119, 149 ACWS (3d) 545.
16. *Personal Property Security Act*, RSA 2000, c.P-7, s. 51.