

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

BANK OF MONTREAL

Applicant

and

ROLL X CARRIERS INC., 14379373 CANADA INC. and 2315269 ONTARIO INC.

Respondents

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, c. C-43, AS AMENDED

AIDE MEMOIRE OF THE APPLICANT

May 13, 2024

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Poliak
Tel: (416) 218-1161
Email: maya@chaitons.com

Lawyers for the Applicant

TO: SERVICE LIST

Purpose of the Case Conference

1. The Applicant seeks to schedule the hearing of its receivership application and an order setting a timetable for delivery of responding materials, reply and cross-examinations. There is urgency to this receivership application as: (i) Roll X Carriers Inc. (“**Roll X**”) no longer appears to be carrying on business from the facility that it previously occupied and did not disclose this fact to the Applicant; (ii) in March 2024, while under forbearance, Roll X transferred \$USD \$318,000 to a related party; (iii) Roll X has stopped depositing funds in its account with the Applicant; and (iv) there was a change in control of the Respondent 2315269 Ontario Inc. (“**231**”) in March 2024 that was not disclosed to the Applicant.

Overview

2. Roll X carries on business as a transportation and logistics company across Canada and the United States of America.

3. The Applicant made loans to Roll X in the cumulative amount of approximately \$3.6 million. As security for the loans, the Applicant was granted, among other things, a security interest in all assets and undertakings of Roll X, 14379373 Canada Inc. and 231.

Demand and Forbearance

4. On October 5, 2023, the Applicant served demands and notices of intention to enforce its security on each of the Respondents. In November 2023 the parties entered into a Forbearance Agreement pursuant to which the Applicant agreed to forbear from taking enforcement steps until April 30, 2024, on, among others, the following terms:

- (a) Roll X was required to deposit funds to its operating account with the Lender;
- (b) Roll X was not permitted to dispose of any of its assets other than in the ordinary course of business; and
- (c) Roll X consented to the appointment of a receiver upon an occurrence of an event of default under the Forbearance Agreement.

Defaults under the Forbearance Agreement

5. Commencing in January 2024, Roll X began defaulting on its obligations under the Forbearance Agreement by, among other things, failing to comply with its reporting obligations, being consistently at the top of the authorized limit under its operating line and substantially limiting the deposits being made into its bank account with the Applicant.

6. On April 4, 2024, Roll X transferred \$USD318,000 to Roll X Freight Inc. (“**Freight**”), a related company. Counsel for the Applicant was advised by Sudha Chandra (“**Chandra**”), lawyer for the Respondents, that the funds were used to repay a loan from Freight and that the transfer could not be returned.

7. Roll X did not repay the amounts owing to the Applicant by April 30, 2024, or at all. As a consequence of all of the defaults under the Forbearance Agreement, the Applicant is entitled to appoint a receiver pursuant to the terms of its loan and security and the Forbearance Agreement.

8. The property from which Roll X carried on business was sold in March 2024. Roll X advised BMO that it was now carrying on business from a property municipally known as 6750 Davand Drive, Mississauga, Ontario (the “**Davand Location**”). As set out in greater detail below,

the Applicant has just learned that Roll X is no longer carrying on business from that location and the Applicant has no information about its current operations location.

9. In light of the foregoing, the Applicant seeks an order appointing a receiver in order to take control and possession of the Respondents' assets and sell the Respondents' property in an orderly court-supervised process for the benefit of Roll X's stakeholders.

Service and Scheduling Attempts

10. During the Forbearance Agreement negotiations and thereafter the Respondents were represented by Chandra. On May 3, 2024, Chaitons LLP ("**Chaitons**"), counsel for the Applicant, wrote to Chandra to:

- (a) advise that the Applicant's receivership materials are ready to be served;
- (b) ask if she will accept service on behalf of the Respondents; and
- (c) request her availability for a case conference on May 13, 2024, May 14, 2024 or May 16, 2024.

11. Chandra replied to Chaitons' email on May 3, 2024, confirmed that she will accept service but took the position that she is not available to attend at a case conference in May, 2024.

12. By further email correspondence dated May 3, 2024, Chaitons advised Chandra that the Applicant was not prepared to wait until June 2024 to schedule a case conference and provided Chandra with the following proposed timetable for delivery of responding materials and the hearing of the application:

- (a) Responding materials due by May 24, 2024;

- (b) Reply materials by Mary 31, 2024;
- (c) Examinations to be completed by June 10, 2024;
- (d) Hearing to proceed during the week of June 17, subject to the Court's availability.

Attached as **Exhibit "A"** to this Aide Memoire is the email correspondence between Chaitons and Chandra dated May 3, 2024.

13. Chandra has not provided any feedback on the proposed timetable despite numerous follow up emails from Chaitons.

14. Application Materials were sent to Chandra by Chaitons on May 9, 2024 by email. Despite the fact that Chandra confirmed on May 3, 2024 that she will accept service of the Application Record on behalf of the Respondents, Chandra took the position that she cannot accept service because she is away in the United States of America. Attached to this Aide Memoire as **Exhibit "B"** collectively are copies of the correspondence between Chaitons and Chandra regarding service, the case conference and the proposed timetable.

15. On May 9, 2024, out of abundance of caution, the Applicant arranged for personal service of the Application Record on each of the Respondents at their registered offices and at the Davand Location where the Applicant was advised by Roll X it was carrying on business from.

16. The Applicant is advised by its process server that:

- (a) each of the registered offices of the Respondents are residential addresses;
- (b) he was unable to effect personal service on the Respondents;

- (c) he left a copy of the Application Record in a sealed envelop at the front door of each of the residential properties;
- (d) he attended at the Davand Location; and
- (e) he was advised by the building manager at the Davand Location that Roll X has not carried on business from the Davand Location for months.

The Affidavits of Service and Affidavits of Attempted Service of Martin Gleeson, the Applicants' process server, each sworn May 10, 2024 have been uploaded to caselines.

17. On May 10, 2024, Chaitons also served the Application Records on each of the Respondents by courier sent to each of the Respondents' registered addresses. A copy of the Affidavit of Service of Lynda Christodoulou, a legal assistant with Chaitons, sworn May 10, 2024 was uploaded to caselines.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of May, 2024.



Maya Poliak
Chaitons LLP

TAB A

From: [Maya Poliak](#)
To: [Sudha Chandra](#)
Cc: [Gary Feldman](#); [Lynda Christodoulou](#)
Subject: RE: 143 and BMO
Date: Friday, May 3, 2024 7:32:50 PM

Ms. Chanda

I believe you misread my email. We propose to deliver the Bank's Motion Record by May 6, 2024. We will proceed to schedule a case conference for May 14, 2024 and will seek to approve the below referenced timetable. If you have any objections to the proposed timetable, please advise us by no later than 5:00 pm on May 6, 2024. If you consent to the timetable, there is no need for anyone from your office to attend. If you intend to oppose the proposed timetable please arrange to either attend at a case conference or have someone else at your office attend for you. The case conference will not be longer than 15 minutes and will proceed via zoom. We will add you to caselines once provided and will forward you the zoom link.

Finally, please advise if there are any dates in the last two weeks of June, that you are not available for a 90 minute hearing.

Sincerely,

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Sudha Chandra <chandralawoffice@gmail.com>
Sent: Friday, May 3, 2024 1:47 PM
To: Maya Poliak <Maya@chaitons.com>
Cc: Gary Feldman <Gary@chaitons.com>; Lynda Christodoulou <LyndaC@chaitons.com>
Subject: Re: 143 and BMO

CAUTION: [External]

I am in the USA starting tomorrow. May 6 does not work for me.

On Fri, May 3, 2024 at 12:34 PM Maya Poliak <Maya@chaitons.com> wrote:

Thank you Ms. Chandra for your prompt response. The purpose of the case conference was to schedule the hearing and set a timetable for delivery of responding materials. The case conference will not be necessary if parties can consent to a timetable and a hearing date. I understand from your email below that you are available to attend at a hearing in June 2024 with the exception of the dates identified below. To facilitate with your

availability we propose the following timetable for delivery of responding materials:

1. BMO's application record will be served by May 6, 2024;
2. Responding materials due by May 24, 2024;
3. Reply materials by May 31, 2024;
4. Examinations to be completed by June 10, 2024;
5. Hearing to proceed during the week of June 17, subject to the Court's availability.

Please advise if you are agreeable to the proposed timetable. We will canvass the Court's availability for a hearing for the week of June 17, 2024 and get back to you shortly.

Sincerely,

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Sudha Chandra <chandralawoffice@gmail.com>
Sent: Friday, May 3, 2024 11:46 AM
To: Maya Poliak <Maya@chaitons.com>
Cc: Gary Feldman <Gary@chaitons.com>
Subject: Re: 143 and BMO

CAUTION: [External]

I will accept service on behalf of Roll X Carriers Inc.
However, I am not available in May.
I am not available on June 4 and 11.
Please provide me with a few dates. I will confirm my availability once I get the dates.

On Fri, May 3, 2024 at 11:40 AM Maya Poliak <Maya@chaitons.com> wrote:

Ms. Chandra

As you are aware, we are lawyers for Bank of Montreal ("BMO"). Further to Mr. Feldman's email below, BMO has completed the application record for an order appointing a receiver. Please advise if you will accept service of BMO's Application Record on behalf of Roll X Carriers Inc., 14379373 Canada Inc. and 2315269 Ontario Inc.

We are advised by the Court that the following dates are available for a virtual case

conference for the purpose of scheduling the hearing of the Receivership Application and setting a timetable for delivery of responding materials: (i) May 13, 2024; (ii) May 14, 2024; and (iii) May 16, 2024.

Please advise us by 5:00 pm today if you will accept service of BMO's Application Record and, if you will agree to accept service, please advise if you have a preference for a date for a case conference. If we do not hear from you by 5:00 pm today, we will proceed to serve the Application Record personally and will schedule a case conference for a date that is acceptable to our office.

Sincerely,

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Gary Feldman <Gary@chaitons.com>
Sent: Tuesday, April 23, 2024 12:24 PM
To: Sudha Chandra <chandralawoffice@gmail.com>
Subject: RE: 143 and BMO

This has proceeded too far and, because of your client's breaches, BMO is not prepared to consider an extension of the FA and will require repayment of the indebtedness. In the interim we are proceeding with the application we leave it to your client to complete a refinancing and payout prior to the appointment of the receiver.

Gary Feldman | Partner
Chaitons LLP | T: 416.218.1130

From: Sudha Chandra <chandralawoffice@gmail.com>
Sent: Tuesday, April 23, 2024 11:34 AM
To: Gary Feldman <Gary@chaitons.com>
Subject: Re: 143 and BMO

CAUTION: [External]

Could my client get time to put the money back?

He does not have the money at the moment. We can discuss the extension of FA and this extension at the same time.

Mr. Khurram's operations are hurting with BMO in dishonoring the issued checks from 143 but accepting payments deposited in the account from receivables.

On Tue, Apr 23, 2024 at 11:13 AM Gary Feldman <Gary@chaitons.com> wrote:

Sure we can discuss an extension as soon as the \$320,000 US is returned to BMO – I told you that numerous times. Court material for the appointment of a receiver is currently in preparation.

Gary Feldman | Partner
Chaitons LLP | T: 416.218.1130

From: Sudha Chandra <chandralawoffice@gmail.com>

Sent: Monday, April 22, 2024 4:29 PM

To: Gary Feldman <Gary@chaitons.com>

Subject: 143 and BMO

CAUTION: [External]

Counsel Feldman,
Where does this matter stand now?
Is there a possibility of extending the FA? My client alleges various infractions on BMO" part?
Please advise.
Thanks

--

CHANDRA LAW OFFICE
Barristers & Solicitors & Notary Public

109 Woodbine Downs Blvd Unit 9 - 10

Toronto, Ontario M9W 6Y1

Ph: 416-749-7500

Fax: 416-749-7501

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Thank you.

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Thank you.

TAB B

From: [Sudha Chandra](#)
To: [Maya Poliak](#)
Cc: [Lynda Christodoulou](#); [Gary Feldman](#)
Subject: Re: Bank of Montreal v Roll X Carriers Inc. - CV-24-00719841-00CL (83868)
Date: Thursday, May 9, 2024 1:10:08 PM
Attachments: [image002.png](#)

CAUTION: [External]

Ms. Maya,
I am not available to accept service till May 21.

On Thu, May 9, 2024 at 12:59 PM Maya Poliak <Maya@chaitons.com> wrote:

Ms. Chandra

In her email, Ms. Christodoulou is simply asking you to confirm that you accept service of BMO's application record. You have provided us with no explanation as to why you cannot provide this confirmation. Since you refuse to accept service, we will proceed to serve the Respondents personally.

Further to my multiple emails to you, the purpose of the case conference on May 14, 2024 is to set a time table for delivery of responding materials and set a hearing date. Since you will not agree to accept service on behalf of the Respondents, we will proceed on the basis that you do not act for them.

In the alternative, if you do act for all of the respondents, please confirm that you accept service of the Application Record forthwith and provide us with comments on the timetable proposed below (which was previously provided to you in my correspondence dated May 3, 2024, a copy of which is attached for your reference:

1. Responding materials due by May 24, 2024;
2. Reply materials by May 31, 2024;
3. Examinations to be completed by June 10, 2024;
4. Hearing to proceed during the week of June 17, 2024, subject to the Court's availability.

As requested in my correspondence dated May 3, 2024, if you would like to amend the timetable or provide us with alternative dates in the month of June please let us know as soon as possible in advance of May 14, 2024.

We will be filing an Aide Memoire in support of the case conference returnable on May 14, 2024 and will include copies of all of our correspondence in the Aide Memoire.

Maya Poliak | Partner
Chaitons LLP | T: 416.218.1161

From: Sudha Chandra chandralawoffice@gmail.com
Sent: Thursday, May 9, 2024 11:46 AM
To: Lynda Christodoulou <LyndaC@chaitons.com>
Cc: Maya Poliak <Maya@chaitons.com>
Subject: Re: Bank of Montreal v Roll X Carriers Inc. - CV-24-00719841-00CL (83868)

CAUTION: [External]

Ms. Lynda,

You do not seem to get it. You keep on sending me emails after emails for the scheduling of a hearing for the appointment of the Receivership.

I have written to all of you that I am away in the USA for reasons. But it does not matter to you.

Please note that I am not available on May 14 for the scheduling of the hearing. Please do that after May 20.

This is simply annoying.

On Thu, May 9, 2024 at 10:17 AM Lynda Christodoulou <LyndaC@chaitons.com> wrote:

As you are aware, we are lawyers for Bank of Montreal (“**BMO**”). BMO is bringing an application for the appointment of a receiver over the property, assets and undertakings of Roll X Carriers

Inc., 14379373 Canada Inc. and 2315269 Ontario Inc. As you are also aware, the Receiver scheduled a case conference returnable on May 14, 2024 for the purpose of scheduling the hearing of the Receivership Application.

Attached to this email is a copy of BMO's application record is attached hereto and served on you pursuant to the *Rules of Civil Procedure*. Please advise us by 4:00 pm today if you accept service on behalf of all of the Respondents

Regards,



Lynda Christodoulou | Legal Assistant to Maya Poliak & Danish Afroz

T: 416.218.1783 E: LyndaC@chaitons.com

5000 Yonge St, 10th Floor, Toronto, ON, M2N 7E9

chaitons.com

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Thank you.

BANK OF MONTREAL
Applicant

-and-

ROLL X CARRIERS INC.. *et al*
Respondents
Court File No. CV-24-00719841-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AIDE MEMOIRE OF THE APPLICANT

CHAITONS LLP

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