

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

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

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

Respondents

APPLICATION UNDER SUBSECTION 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

FACTUM OF THE APPLICANT
(Appointment of a Receiver)

May 25, 2024

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

Maya Poliak (LSO No. 54100A)
Tel: (416) 218-1161
Email: maya@chaitons.com

Lawyers for the Applicant

TO: THE SERVICE LIST

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FACTUM OF THE APPLICANT

PART I – NATURE OF THE APPLICATION

1. This factum is filed by Bank of Montreal (the “**Bank**”) in support of its application for an order (the “**Receivership Order**”) appointing MNP Ltd. (“**MNP**”) as receiver (in such capacity, the “**Receiver**”), without security, over the property, assets, undertakings of Roll X Carriers Inc. (“**Roll X**”), 14379373 Canada Inc. (“**143**”) and 2315269 Ontario Inc. (“**231**”, collectively with Roll X and 143, the “**Respondents**”) acquired for, or used in relation to a business carried on by Roll X.

2. Roll X carried on business as a transportation and logistics company. The Bank is the senior secured lender of Roll X and holds a general security interest against Roll X’s assets. In addition

to the Bank, there are approximately 19 other creditors who registered security interests against trucks and vehicles in Roll X's possession.

3. Roll X and the Bank entered into a forbearance agreement pursuant to which Roll X consented to the appointment of the receiver in the event of default. Roll X did not comply with its obligations under the forbearance agreement. In addition to its failure to comply with its monetary and reporting obligations under the forbearance agreement, during the forbearance period, Roll X diverted approximately USD\$318,000 to a related party.

4. On March 22, 2024, the Bank was advised by Roll X's counsel that it has ceased carrying on business. The Bank immediately inquired as to the location of Roll X's assets. By email dated March 23, 2024, counsel for Roll X advised the Bank's counsel that "there are no assets".

5. It is just an convenient in the circumstances to appoint a receiver for the purpose of, among other things, locating and securing the Respondents' assets, conduct investigations into the Respondents' conduct, market any recovered property for sale in a court supervised process and collect accounts receivable.

PART II – FACTS

6. The facts underlying this application are more fully set out in the affidavit of Jason Henderson sworn May 1, 2024 (the "**Henderson Affidavit**").¹ All capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Henderson Affidavit, and all monetary amounts referred to herein are in Canadian currency unless otherwise stated.

¹ Applicant's Application Record, Tab 2, Affidavit of Jason Henderson sworn May 1, 2024 (the "**Henderson Affidavit**").

The Respondents

7. Roll X is a Canadian corporation with its head office located in Maple, Ontario. Khurram Shahzad Awan (“**Awan**”) is the sole officer and director of Roll X.²

8. Roll X carried on business as a transportation and logistics company across Canada and the United States of America (“**USA**”). The company has a fleet of trucks and trailers which consist of both company trucks and owner operator trucks. Roll X employs approximately 60 non-unionized drivers.³

9. The Respondent, 143, is a Canadian corporation with its head office located in Brampton, Ontario Ejaz Ahmed (“**Ahmed**”), Zahid Iqbal (“**Iqbal**”) and Awan are the directors and officers of 143. Until recently, 143 was the registered owner of a commercial property located at 5270 Creekbank Road, Mississauga, Ontario (the “**Creekbank Property**”).⁴

10. The Respondent 231 is a Canadian corporation with its head office located in Milton, Ontario. Adnan Ahmad (“**Ahmad**”) is the sole director of 231. Ahmad replaced Awan as director of 231 on March 6, 2024. Awan was the sole director of this corporation from its inception in 2012 until March 6, 2024. The Bank was not aware of this change in control until it conducted a corporate profile search in preparation of these proceedings.⁵

Credit Facilities

11. Pursuant to a Letter of Agreement dated October 6, 2022 between BMO and Roll X (the “**Roll X Loan Agreement**”), as amended by Letter of Agreement – Amendment dated March 9,

² Henderson Affidavit, at para. 3; Exhibit “A” to the Henderson Affidavit.

³ Henderson Affidavit, at para. 4.

⁴ Henderson Affidavit, at paras. 5-6; Exhibit “B” to the Henderson Affidavit.

⁵ Henderson Affidavit, at para. 7; Exhibit “C” to the Henderson Affidavit.

2023 (the “**First Amendment**”) and Letter of Agreement – Amendment & Restatement dated June 21, 2023 (the “**Second Amendment**”), BMO made the following credit facilities available to Roll X (collectively, the “**Roll X Loan**”):⁶

- (a) Facility 1: \$100,000 BMO Corporate Mastercard facility to be used for operating financing; and
- (b) Facility 2: \$3.5 million facility comprised of a \$3 million operating demand loan approved in November 2022 and a \$500,000 overdraft lending facility bulge approved in February 2023.

12. As set out in the Roll X Loan Agreement all of the credit facilities extended by the Bank to Roll X are repayable on demand.⁷

Security

13. As security for the obligations of Roll X, the Bank was granted, among other things, the following security documents:⁸

- (a) Security Agreement dated November 15, 2022 granted by Roll X as borrower;
- (b) A joint and several guarantee dated November 15, 2022 granted by Ahmed, Awan and Iqbal guaranteeing Roll X’s obligations to the Bank under the Roll X Loan;
- (c) Guarantees each dated November 15, 2022 granted by 143 and 231 guaranteeing Roll X’s obligations to the Bank under the Roll X Loan; and

⁶ Henderson Affidavit, at para. 8; Exhibit “D” to the Henderson Affidavit.

⁷ Henderson Affidavit, at para. 9.

⁸ Henderson Affidavit, at para. 10; Exhibits “E” to “H” to the Henderson Affidavit.

(d) Security Agreements each dated November 15, 2022 granted by 143 and 231.

14. Pursuant to the terms of the loan and security documents referenced above, each of the Respondents agreed that upon default, the Bank is entitled to appoint a receiver in writing and/or make an application for the court appointment of a receiver.⁹

15. In August 2023, the Bank was advised that Ahmed and Iqbal terminated their relationship with Roll X. In accordance with the terms of their guarantees, their respective liabilities under the guarantee expired in November 2023, 90 days following notice.¹⁰

Secured Creditors

16. The Bank registered financing statements against each of the Respondents under the *Personal Property Security Act* (Ontario) (“**PPSA**”).¹¹

17. In addition to the Bank, approximately 19 parties registered multiple financing statements against Roll X that appear, based on their registrations, to encompass specific leased equipment, motor vehicles, trucks or trailers. These lenders are located across the Greater Toronto Area with some in British Columbia and Quebec.¹²

18. The PPSA Summary for 143 does not disclose any registrations aside from the registration in favour of BMO.¹³

19. The PPSA Summary for 231 discloses four registrations against 231 that appear to encompass specific leased equipment or motor vehicles.¹⁴

⁹ Henderson Affidavit, at para. 11.

¹⁰ Henderson Affidavit, at para. 12.

¹¹ Henderson Affidavit, at para. 13.

¹² Henderson Affidavit, at paras. 14-15; Exhibit “I” to the Henderson Affidavit.

¹³ Henderson Affidavit, at para. 16; Exhibit “J” to the Henderson Affidavit.

¹⁴ Henderson Affidavit, at para. 17; Exhibit “K” to the Henderson Affidavit.

Demand on the Roll X Loans

20. On October 5, 2023, Chaitons LLP (“**Chaitons**”), on behalf of the Bank, demanded immediate payment from Roll X under the Roll X Loan Agreement. Chaitons also served demands on 143 and 231 under their respective guarantees and served notices of intention to enforce its security on each of the Respondents pursuant to section 244(1) of *the Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”).¹⁵

Forbearance Agreement

21. Pursuant to a Forbearance Agreement dated November 6, 2023 among BMO, the Respondents and Awan, the Bank agreed to forbear from taking steps to recover payment of the amounts owing to it or from enforcing its security until April 30, 2024 on various terms including:

- (a) Roll X was not allowed any unauthorized excesses and was required to monitor its cash flow to ensure that sufficient funds remained on deposit in its accounts with the Bank;
- (b) Roll X was required to deposit to its operating account with the Bank all monies received by it on a daily basis;
- (c) Neither Roll X nor the guarantors were permitted to dispose of any of Roll X's assets other than in the ordinary course of business without the prior written consent of the Bank;
- (d) Roll X was required to provide to the Bank bi-weekly updates on its refinancing efforts and all financial reports on a monthly basis; and

¹⁵ Henderson Affidavit, at para. 18; Exhibit “L” to the Henderson Affidavit.

- (e) Roll X consented to the appointment of a receiver upon an occurrence of an event of default under the Forbearance Agreement.

22. 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 forcing the Bank to return countless cheques and debits to prevent unauthorized excesses and failing to provide to the Bank status updates with respect to its financing and/or sale efforts.¹⁶

23. During the month of March, Roll X requested numerous “stop payments” on debits submitted by various vehicle lessors claiming that the requested payments were not due to those lessors. Roll X remained delinquent in providing monthly reports and borrowing certificates and in providing any status updates with respect to its financing efforts.¹⁷

24. On April 4, 2024, the Bank learned that Roll X authorized the Bank’s account administrative team and provided authorization to them to return 50 lease payments, which created a cash surplus in Roll X’s US dollar account. Roll X then transferred USD\$318,000 to Roll X Freight Inc., another company owned and controlled by Awan. The funds were then deposited at another financial institution.¹⁸

25. The Bank advised Roll X that those funds needed to be immediately returned and the transfer is in contravention to Roll X’s agreements with the Bank. The Transfer has not been returned despite BMO’s demands.¹⁹

¹⁶ Henderson Affidavit at para. 24.

¹⁷ Henderson Affidavit at para. 25.

¹⁸ Henderson Affidavit at para. 26; Exhibit “O” to the Henderson Affidavit.

¹⁹ Henderson Affidavit at paras. 27-30; Exhibits “P” to “R” to the Henderson Affidavit.

Default of 143 Loan and Sale of the Creekbank Property

26. In January 2024, 143 defaulted on its payment obligations to the Bank secured by the First Charge and monthly defaults continued. On March 4, 2024 Chaitons, on behalf of the Bank, demanded immediate payment from 143 of its direct indebtedness secured by the First Charge.²⁰

27. On March 27, 2024, the Creekbank Property was sold by 143. The net proceeds were used to repay the balance owing under the First Charge and the surplus sale proceeds in the amount of \$445,000.00 were paid to the Bank and applied in permanent reduction of the Roll X Loan in accordance with the terms of the Forbearance Agreement.²¹ Roll X had carried on business from the Creekbank Property. Following the sale of the Creekbank Property, the Bank was advised Roll X transferred its business operations to 6750 Davand Drive, Mississauga, Ontario (the “**Davand Location**”).²²

28. Roll X failed to repay its outstanding debt to BMO by April 30, 2024 as required by the Forbearance Agreement. As of April 30, 2024, the Respondents continue to be indebted to the Bank in the amount of \$2,413,843.56 for principal and interest, exclusive of fees.²³

Urgency

29. On May 10, 2024, BMO’s process server attended at the Davand Location and was advised that Roll X has not been carrying on business from that location for 3 months. The process server also attended at the Respondents’ registered addresses, all of which appear to be personal residences.²⁴

²⁰ Henderson Affidavit at paras. 20-21; Exhibit “N” to the Henderson Affidavit.

²¹ Henderson Affidavit at para. 22.

²² Henderson Affidavit at para. 23.

²³ Henderson Affidavit, at paras. 30 and 32.

²⁴ Affidavit of Attempted Service of Martin Gleeson sworn May 10, 2024.

30. On May 14, 2024, Maya Poliak, a partner with Chaitons with carriage of this file and Sudha Chandra, counsel for the Respondents, attended at a case conference to schedule the hearing of the Receivership. Ms. Poliak sought to schedule the hearing of the Receivership Application on an urgent basis. Ms. Chandra disputed that there was urgency to the application and asked that the scheduling hearing be adjourned. At the request of Ms. Chandra the scheduling hearing was adjourned to May 28, 2024.²⁵

31. On May 22, 2024, in an email correspondence between Ms. Poliak and Ms. Chandra, Ms. Chandra advised that Roll X is no longer carrying on business. In response to Ms. Poliak's question regarding the location of the assets, Ms. Chandra stated that she is advised by her client that there are no assets.²⁶

PART III – ISSUE

32. The sole issue before the Court is whether it is just and convenient in the circumstances to appoint the Receiver.

PART IV – LAW AND ARGUMENT

It is just and convenient to appoint the Receiver

33. Pursuant to section 243 of the BIA, and section 101 of the *Courts of Justice Act* (Ontario) the Court may appoint a receiver where it is “just or convenient to do so.”²⁷

34. In making its determination if it is “just or convenient” to appoint a receiver, the Court must have regard to all of the circumstances of the case, including the nature of the property and

²⁵ Endorsement of Justice Cavanagh dated May 14, 2024.

²⁶ Affidavit of Antoinette De Pinto sworn May 25, 2024; Exhibit “A” to the Affidavit of Antoinette De Pinto.

²⁷ [Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 \(the “BIA”\), section 243; Courts of Justice Act, R.S.O. 1990, c. 43, section 101.](#)

the rights and interests of all parties in relation to the property.²⁸

35. The burden on an applicant is lessened when the terms of the secured creditor's security include the right to appoint a receiver. Further, the nature of appointing a receiver is not as extraordinary or equitable where the relevant security documents permit the appointment of a receiver.²⁹

36. A court-appointed receivership is just and convenient and appropriate in the circumstances as:

- (a) the Debtors owe in excess of \$2.4 million to the Bank;
- (b) the Respondents transferred USD\$318,000 to a related company for reasons other than operating purposes;
- (c) the Respondents have failed to continue to make deposits to their operating accounts with BMO;
- (d) the Respondents consented to the appointment of a Receiver as part of the Forbearance Agreement;
- (e) the Respondents misled the Bank and the Court regarding the location of Roll X's business operations;
- (f) the Respondents have admitted that they are no longer carrying on business and have refused to advise the Bank where their assets are located;

²⁸ [*Bank of Montreal v. Carinal National Leasing Ltd.*, 2011 ONSC 1007 \[“*Carnival*”\], at para. 24](#) citing [*Bank of Nova Scotia v. Freure Village on Clair Creek* \(1996\) 40 C.B.R. \(3d\) 274 \(Ont. Gen. Div.\) \(“*Freure Village*”\)](#), at para. 10.

²⁹ [*Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866](#) at [para. 27](#).

(g) there is no prospect of payment being made to the Bank absent the appointment of a Receiver.

37. The Bank submits that in the circumstances, it is in the best interests of the Bank and other PPSA registrants, and is just and convenient, for the Court to appoint a receiver to locate, preserve, protect and monetize the Respondents' property.

38. MNP has consented to act as receiver.

PART IV – ORDER REQUESTED

39. The Bank seeks an Order appointing MNP as Receiver.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of May, 2024.



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

Maya Poliak (LSO No. 54100A)
Tel: (416) 218-1161
Email: maya@chaitons.com

Lawyers for the Applicant

SCHEDULE “A”

AUTHORITIES

1. [*Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007](#)
2. [*Bank of Nova Scotia v. Freure Village of Clair Creek*, \(1996\) 40 CBR \(3d\) 274 \(ON S.C.J.\)](#)
3. [*Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866](#)
4. [*BCIMI Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

Court may appoint receiver

243. (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

Courts of Justice Act, R.S.O. 1990, c. C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where

it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

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PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANT

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

Maya Poliak (LSO No. 54100A)
Tel: (416) 218-1161
Email: maya@chaitons.com

Lawyers for the Applicant