



FORM 32 (RULE 8-1(4))

No. S-238583
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

THE TORONTO-DOMINION BANK

Petitioner

and

HBJR HOLDINGS LTD.

Respondent

NOTICE OF APPLICATION

Name of applicant: BDO Canada Limited (“**BDO**”) in its capacity as the Receiver and Manager of all of the assets, undertakings and property of HBJR Holdings Ltd. (the “**Receiver**”)

To: The petitioner and the respondent

TAKE NOTICE that an application will be made by the applicant to the presiding judge or associate judge at the courthouse at the Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on June 26, 2024 at 9:45 a.m. for the order set out in Part 1 below.

The applicant estimates that the application will take 5 minutes.

- This matter is within the jurisdiction of an associate judge.
- This matter is not within the jurisdiction of an associate judge.

Part 1: ORDER SOUGHT

1. An order substantially in the form attached as **Schedule “A”** or in such other form as the Receiver may seek and the court may order:
 - a) Approving the activities of the Receiver, as set out in the Receiver’s First and Second Reports (together, the “**Reports**”);
 - b) Approving the fees and disbursements of the Receiver and its counsel;

- c) Directing and authorizing the Receiver to distribute any remaining funds in its possession, or that may hereafter come into its possession, to The Toronto-Dominion Bank (“**TD Bank**”);
- d) Discharging BDO as Receiver subject to the performance of incidental duties and with BDO continuing to be entitled to the benefit of orders made herein; and
- e) Releasing BDO of any and all liabilities in connection with its acts and omissions as Receiver except for gross negligence or wilful misconduct.

Part 2: FACTUAL BASIS

Background

1. On December 21, 2023, the Honourable Justice Wilkinson ordered (the “**Receivership Order**”) that BDO be appointed Receiver and Manager of all of the assets, undertakings and property of HBJR Holdings Ltd. (“**HBJR**”).
2. Prior to the date of the Receivership Order, HBJR carried on a business selling compression socks, slippers, sleepwear and other apparel to consumers and other businesses through online platforms. HBJR did not own or lease physical premises. All inventory was held at three third party logistics (“**3PL**”) warehouses, located in Surrey, BC, Richmond, BC, and Illinois, USA.
3. HBJR’s assets consisted primarily of inventory, accounts receivable and intellectual property (the “**Assets**”). HBJR received orders from customers through sales representatives or through its online sales platforms. HBJR would then direct the relevant 3PL to fulfill orders.

HBJR’s Creditors

4. HBJR’s senior secured creditor is TD Bank. TD Bank is owed in excess of \$1.5 million. As discussed further below, TD Bank will suffer a significant shortfall. HBJR’s unsecured creditors, collectively owed approximately \$419,000, will see no recovery.

Significant Operating Costs

5. The Surrey and Illinois 3PLs asserted liens over inventory located at their respective facilities. The quantum of the liens totaled approximately \$97,000 for the Surrey location, \$2,000 for the Richmond location and \$196,207 USD for the Illinois location.
6. The quantum of the liens accrued on a monthly basis due to storage and/or fulfilment services. Maintaining the business as a going concern necessarily involved the Receiver incurring ongoing contractor and trade costs.

Marketing and Interest in the Assets

7. On January 3, 2024, the Receiver commenced a tender bid process to solicit offers for the Assets to a wide range of parties. The Receiver sent a summary of the Assets to 17 liquidators and competitors, 19 former or current customers (including HBJR's largest customers by volume), six parties that contacted the Receiver directly, and the former principal of HBJR, Mr. Brandon Segal. Additionally, on January 15 and 22, 2024, the Receiver published an advertisement in the Insolvency Insider, a widely distributed publication within the insolvency community. Interested parties were permitted to make offers for all or any part of the Assets.
8. Due to feedback received from the market, and the significant operating costs that served to reduce any potential net recovery upon a sale of the Assets, a deadline for offers was set for January 24, 2024. Five parties signed non-disclosure agreements and were thereafter provided additional financial information with respect to the company. Mr. Segal was given access but was not required to sign a non-disclosure agreement (due to his prior knowledge of the information).
9. Following review of the additional financial information, two parties indicated that they would not be moving forward with an offer. Four parties ultimately submitted offers summarized as follows:
 - a) Purchase of the inventory from a liquidator for the amount of \$164,134;

- b) Purchase of the inventory from another liquidator for an amount less than \$164,134;
- c) Purchase of all of the Assets from the Illinois 3PL, MAI Fulfillment LLC (“MAI”) or nominee for a purchase price of \$470,000 and a waiver of its lien; and
- d) Purchase of all of the Assets from Mr. Segal for a purchase price of \$400,000 (after accounting for the 3PLs’ liens, the net value of the offer was approximately \$100,000).

Sale of the Assets/No Further Madate

- 10. MAI’s offer was the highest and best offer received. The Receiver engaged with MAI (and, ultimately, its nominee purchaser, The SockDoc LLC), to negotiate a definitive purchase and sale agreement.
- 11. The parties executed a purchase and sale agreement dated March 27, 2024 subject only to court approval. The sale was approved on April 9, 2024 and closed on April 22, 2024. The Receiver estimates that TD Bank will ultimately receive approximately \$427,000 on account of the indebtedness.
- 12. The sale of HBJR’s Assets concludes the Receiver’s mandate. The Receiver anticipates receiving a GST refund totaling \$7,500 and an additional \$26,000 in accounts receivable; however, no material work is required to collect same. It is, therefore, appropriate for the Receiver to be discharged.

Receiver’s Fees and Disbursements

- 13. For the period December 21, 2024 to May 17, 2024, the Receiver’s fees and disbursements totaled \$158,077 inclusive of taxes (fees: \$150,256, disbursements: \$295, GST: \$7,527). The Receiver estimates that its fees to completion, inclusive of disbursements and taxes, will be no more than \$10,000.
- 14. The time and disbursements incurred by the Receiver in the course of its duties are fair and reasonable in a receivership of the nature described herein. The cost of these proceedings is comparable to receivership assignments of similar scale and complexity.

15. The hourly rates charged by the Receiver are consistent with the average hourly rates billed by the Receiver on other engagements and, to the Receiver's knowledge, are consistent with other insolvency firms of comparable size engaged on similar receivership matters.
16. TD Bank is the party most directly impacted by the costs of the receivership. TD Bank is satisfied the Receiver acted appropriately and that its fees are reasonable in the circumstances.

Legal Counsel's Fees and Disbursements

17. The legal costs of Owen Bird Law Corporation ("**Owen Bird**"), as counsel to the Receiver, for the period January 4, 2024 to June 3, 2024 total \$40,591.36 inclusive of taxes and disbursements. The details of Owen Bird's fees and disbursements are set out in affidavit #1 of S. Stephens. The Receiver seeks the court's approval of Owen Bird's fees and disbursements as well as an order approving additional fees and disbursements in favour of Owen Bird, up to a maximum of \$10,000 (inclusive of taxes), for the work required to conclude these proceedings, including the within application.
18. The Receiver has reviewed the invoices rendered to it by Owen Bird and believes them to be reasonable and proper. The legal services provided were necessary for the Receiver to fulfil its obligations in these proceedings.

Part 3: LEGAL BASIS

Approval of the Receiver's Activities

1. The court has inherent jurisdiction to approve the activities of its court-appointed receiver. The Receiver's Second Report summarizes its activities to date and establishes that it has acted reasonably, prudently and not arbitrarily. An order approving the activities of the Receiver, as outlined in the Reports, will provide certainty and finality to these proceedings and a level of protection to the Receiver as the court's officer.

Target Canada Co. (Re), 2015 ONSC 7574 at paras 12 and 21 to 25

Approval of the Receiver's and its Counsel's Fees and Disbursements

2. Pursuant to paragraph 22 of the Receivership Order, the Receiver and its counsel are required to pass their accounts from time to time. For this purpose, the accounts are to be referred to a judge of this court and may be heard on a summary basis.
3. Factors to be considered on application for approval of a Receiver's remuneration include: (a) the value of the assets; (b) complications and difficulties encountered by the Receiver; (c) degree of assistance provided by the debtor; (d) time spent by the Receiver; (e) Receiver's knowledge, experience and skill; (f) diligence and thoroughness; (g) responsibilities assumed; (h) results; and (i) cost of comparable services. These factors militate in favour of approval of the Receiver's accounts.

Bank of Montreal v. Nican Trading Co. (1990), 43 B.C.L.R. (2d) 315 (C.A.)
Redcorp Ventures Ltd. (Re), 2016 BCSC 188

4. In order to preserve and maximize value, the Receiver operated HBJR as a going concern. The Receiver did so as efficiently as possible, retaining one key contractor and otherwise handling the bulk of the responsibilities itself. The Receiver has significant knowledge, experience and skill and secured the best possible result in difficult circumstances. The overall costs are commensurate with those charged by comparably sized insolvency firms in relation to similarly sized receivership matters.

Discharge and Release of the Receiver

5. The Receiver has completed its mandate and, accordingly, it is appropriate for the Receiver to be discharged and the receivership proceeding brought to an end. Paragraph 20 of the Receivership Order provides that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the receivership order, save and except for any gross negligence or wilful misconduct on its part, or amounts in respect of obligations imposed on receivers by applicable legislation. As such, it is appropriate for the Receiver to be released for any liability incurred as a result of its activities, subject to the exception for gross negligence or wilful misconduct.

General

6. The Receiver relies on the terms of the Receivership Order, s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and the inherent jurisdiction of the Court.

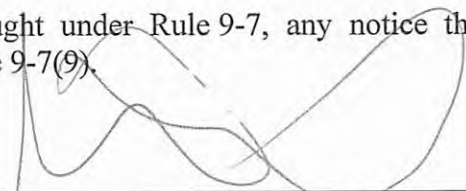
Part 4: MATERIAL TO BE RELIED ON

1. The Receivership Order made December 21, 2023.
2. The Receiver's First Report to the Court, dated March 28, 2024.
3. The Receiver's Second Report to the Court, dated June 10, 2024.
4. Affidavit #1 of C. Bowra, made June 10, 2024.
5. Affidavit #1 of S. Stephens, made June 12, 2024.
6. Such further and other materials as counsel may advise.

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

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

Date: June 12, 2024



Signature of lawyer for applicant,
Scott H. Stephens

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of [] Judge
[] Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

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Between

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and

HBJR HOLDINGS LTD.

Respondent

ORDER MADE AFTER APPLICATION

BEFORE) THE HONOURABLE) 26/JUN/2024
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))

ON THE APPLICATION of BDO Canada Limited in its capacity as the Receiver and Manager of all of the assets, undertakings and property of HBJR Holdings Ltd. (the "**Receiver**") coming on for hearing at Vancouver, British Columbia on 26/JUN/2024 and on hearing Heather A. Frydenlund, counsel for the Receiver, and nobody else appearing although duly served; and upon reading the materials filed herein;

THIS COURT ORDERS that:

1. The activities of the Receiver, as set out in the Receiver's First and Second Reports (together, the "**Reports**"), are hereby approved.
2. The fees and disbursements of the Receiver and its legal counsel Owen Bird Law Corporation, as set out in the Reports and affidavits #1 of C. Bowra and S. Stephens, including the estimated fees to conclude the within receivership proceedings (the "**Final Professional Amounts**"), be and are hereby approved, and the Receiver is authorized to pay the Final Professional Amounts to itself and its counsel.

3. After payment of the Final Professional Amounts, the Receiver is directed and authorized, without further order of this court, to distribute to the plaintiff, The Toronto-Dominion Bank, the balance of the funds held by the Receiver as well as any further funds received.
4. The Receiver is hereby discharged as Receiver of the assets and property of HBJR Holdings Ltd., provided that notwithstanding its discharge herein: (a) the Receiver shall remain receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO Canada Limited in its capacity as Receiver.
5. BDO Canada Limited is hereby released and discharged from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO Canada Limited while acting in its capacity as the Receiver in the within proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, BDO Canada Limited is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceeding, save and except for any gross negligence or wilful misconduct on the Receiver's part.
6. The Receiver has liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the Receiver,
Scott H. Stephens

By the Court.

Registrar

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ORDER MADE AFTER APPLICATION

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Vancouver, BC V6B 0S6
Attention: Scott H. Stephens
File No. 39920-0002
