

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

and

**MARA TECH AVIATION FUELS LTD.,
MARA-TECH AVIATION SERVICES LTD.,
MARA TECH AVIATION FUELS (THOMPSON) LTD., and
MARA TECH AVIATION FUELS (SUDBURY) LTD.**

Respondents

FACTUM

of BDO Canada Limited, Receiver of Mara Tech Aviation Fuels Ltd. et al

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PART I – OVERVIEW

Background and Facts

1. On August 4, 2016, and pursuant to section 243(1) of the Bankruptcy and Insolvency Act and section 101 of the Courts of Justice Act, by way of the Order of the Honourable Mr. Justice Lococo, BDO Canada Limited (“**BDO**”) was appointed as Receiver (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Mara Tech Aviation Fuels Ltd., Mara Tech Aviation Services Ltd., Mara Tech Aviation Fuels (Thompson) Ltd., and Mara Tech Aviation Fuels (Sudbury) Ltd. (collectively “**Mara Tech**” or the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the “**Property**”).
2. Mara Tech provides fueling and ground support services to various airlines. Airlines serviced by Mara Tech include Air Canada/Jazz, Porter Airlines, SunWing Airlines, and Bearskin Airlines. Other customers are private aircrafts and charters, including: Canada Post, Ministry of Natural Resources, and the Canadian Department of

National Defense. At present, Mara Tech maintains fixed base operations at public airports located in Sault Ste. Marie, Sudbury, North Bay, and Windsor. Mara Tech has approximately 95 employees (the “**Services**”).

3. Due to the nature of Mara Tech’s business, the Receiver has not operated Mara Tech’s business or take possession or control of the Property and Mara Tech continues to operate its business. The Receiver has attempted to monitor the financial circumstances of Mara Tech by requesting relevant and material financial information from Mara Tech.

4. Pursuant to the Approval and Vesting Order of Justice Lococo dated December 16, 2016, all of the assets of Mara Tech located at the Sault Ste. Marie, Sudbury and North Bay Airports were sold to Executive Aviation Fuels Ltd. on December 19, 2016 and the only remaining assets of Mara Tech for realization by the Receiver are the equipment of Mara Tech located at Windsor International Airport and the claims and accounts receivable of Mara Tech with respect to the services which it provided at Sault Ste. Marie Airport, Sudbury, North Bay and Windsor Airports.

Agreement of Purchase and Sale with Your Quick Gateway (Windsor) Inc.

5. By way of Agreement of Purchase and Sale dated December 29, 2016 (the “Windsor APS”) the Receiver has received an offer from Your Quick Gateway (Windsor) Inc. with respect to it purchasing from the Receiver the remaining equipment of Mara Tech that is located at the Windsor Airport.

6. The Receiver obtained an appraisal from Canam Apprais Inc. dated August 6, 2016 which includes an opinion as to the liquidation value of the equipment of Mara Tech that is located at the Windsor Airport. The purchase price for the equipment in the Windsor APS is substantially greater than the liquidation value of the equipment.

7. The Agreement of Purchase and Sale between the Receiver and from Your Quick Gateway (Windsor) Inc. is conditional upon Court approval.

8. Pursuant to the Receiver’s sale process, as detailed in the Receiver’s Second Report dated December 5, 2016 and Confidential Supplement Report of the Receiver

dated December 7, 2016, the Receiver received only one offer for Mara Tech's assets namely the offer of Executive Aviation Fuels Ltd. which was completed on December 19, 2016.

9. The Agreement of Purchase and Sale with Executive Aviation Fuels Ltd. initially included the Windsor equipment but the sale of the Windsor equipment was pursuant to the Order of Justice Lococo dated December 16, 2016 carved out from such sale due to the fact that Executive Aviation Fuels Ltd. was not prepared to acquire the Windsor equipment due to the fact that it was unable to obtain long term rights of occupancy to facilities at the Windsor Airport from the owner of the Windsor International Airport, namely, Your Quick Gateway (Windsor) Inc.

10. The only existing parties potentially interested in acquiring the equipment at the Windsor Airport is Your Quick Gateway (Windsor) Inc. and John Marandola, principal of Mara Tech.

11. In order to realize on Mara Tech's equipment located at the Windsor Airport, the Receiver canvassed both John Marandola and Your Quick Gateway (Windsor) Inc. and invited them to make offers for the purchase of the equipment of Mara Tech located at the Windsor Airport.

12. The Receiver received only the offer of Your Quick Gateway (Windsor) Inc. with respect to the purchase of the assets of Mara Tech located at the Windsor Airport (the Windsor Airport).

13. The Receiver recommends that the Court approve the Windsor APS.

14. If the Windsor APS is not approved or completed then the Receiver would intend to discontinue any services relative to a sale of the equipment at the Windsor Airport as any further expense with respect to the realization on the equipment would be in excess of the liquidation value of the equipment.

15. Based upon the financial information and documentation provided to it by Mara Tech, the Receiver has determined that inclusive of proceeds of sale from the Windsor APS and the collection of existing claims and accounts receivable of Mara Tech with

respect to services rendered by it, there will be a shortfall between the Receiver's net proceeds of realization and the outstanding liabilities and obligations of Mara Tech to its secured creditors, unsecured creditors and government priority obligations. The deficiency as estimated by the Receiver will be approximately \$60,000.00.

16. Mara Tech continues to provide ground handling services at the Windsor Airport and in that regard has approximately eleven (11) employees.

17. The aforesaid deficiency of approximately \$60,000.00 does not include obligations and liabilities that it may have to the Windsor employees if there employment is terminated.

Mara Tech's Opposition to the Approval of the Windsor APS

18. Mara Tech takes the position that net proceeds of realization by the Receiver including future collection of existing claims and accounts receivable for services rendered from operations by Mara Tech are sufficient to pay all of Mara Tech's existing obligations and liabilities.

19. Mara Tech wishes to continue the operation of its business at Windsor Airport.

20. Your Quick Gateway (Windsor) Inc., the purchaser under the Windsor APS, is the owner of the Windsor International Airport.

21. Your Quick Gateway (Windsor) Inc., has indicated, that it will be taking "in-house" the operations heretofore carried on by Mara Tech at the Windsor International Airport (the "Services") and will not enter into any long term arrangement with Mara Tech for it to continue to provide Services at Windsor International Airport.

22. Your Quick Gateway (Windsor) Inc. indicates that it will take Mara Tech's existing service operations in-house (the Services) and will perform the same itself regardless whether the Windsor APS is approved by the Court as Your Quick Gateway (Windsor) Inc. will acquire the requisite equipment from other sources.

23. Your Quick Gateway (Windsor) Inc. has for information purposes and without commitment or obligation, indicated that in taking the Services in-house, it expects to retain only 5 or 6 of Mara Tech's Windsor employees.

24. Your Quick Gateway (Windsor) Inc. has exigency plans to provide the Services immediately upon the completion of the Windsor APS such Services being provided to airlines that operate from the Windsor Airport and primarily Jazz and Sunwing.

25. Based upon the information known to the Receiver, regardless whether the Windsor APS is approved and completed, the operations of Mara Tech at Windsor International Airport will end and therefore it will have obligations and liabilities to its existing Windsor employees by reason of the termination of their employment.

PART II – LAW & ARGUMENT

Approval and Vesting Order

26. The Court must exercise extreme caution before it interferes with the process adopted by a Receiver to sell an unusual asset. It is important that perspective purchasers know that, if they are acting in good faith, bargain seriously with a Receiver and enter into an agreement with it, a Court will not lightly interfere with the commercial judgment of the Receiver to sell the asset to them.

Royal Bank v. Soundair Corp., 1991 CarswellOnt 205 at para. 46, (ONCA)

27. Provided a Receiver has acted reasonably, prudently and not arbitrarily, a Court should not sit as in appeal from a Receiver's decision or review in every detail every element of the procedure by which the Receiver made its decision as to do so would be futile and duplicative. It would emasculate the role of the Receiver.

Bank of Montreal v. Dedicated National Pharmacies Inc. et al, 2011 ONSC 4634 at para. 43, (ONSC) Commercial List

Duty of Receiver to all Stakeholders

28. A Court Appointed Receiver has fiduciary obligations to all stakeholders of the Debtor. The Court Appointed Receiver is not an agent of any one party, it does not owe a greater or special duty to one party over another. The Receiver is obligated to act in the best interest of all parties.

Nash v. C.I.B.C. Trust Corp., 1996 CarswellOnt 2185 at para. 6, (ONCJ) General Division, a decision of Justice Ground

Re Philip's Manufacturing Ltd., 1992 CarswellBC 490 at para. 17, (BCCA)

Employees are Stakeholders

29. In considering whether an Agreement of Purchase and Sale should be approved, the Court should also consider the interest of employees, suppliers and customers of the debtor company.

Re Tool-Plas Systems Inc., 2008 CarswellOnt 6258 at paras. 16 and 18, (ONSC) Commercial List a decision of Justice Morawetz

Discharge of Receiver

30. There is a heavy onus on the parties seeking to remove a Receiver. It is heavier than on a party seeking to oppose a Court appointment in the first place.

Canada Trustco Mortgage Co. v. York-Trillium Development Group Ltd., 1992 CarswellOnt 168 at para. 5, (ONCJ) General Division, Commercial List

31. In most cases, a Court Appointed Receiver proceeds to administer the estate in receivership until completion. Thereafter the security holder can move for an order terminating the appointment and requiring the passing of the Receiver's final accounts. If a Receiver has not taken all reasonable steps to realize on the assets of the estate, the Court may adjourn the motion to discharge the receiver.

Bennett, F., *Bennett on Receiverships* at pg. 480, 19th Ed. (2016)

Re Atlantic Travel Service Ltd., 1982 CarswellBC 502 at para. 3 (B.C. S.C.)

32. *In Re Atlantic Travel Service Ltd.*, the Court held that discharging the Receiver was premature as there were still assets available for realization.

Re Atlantic Travel Service Ltd., 1982 CarswellBC 502 at paras. 2 - 3 (B.C. S.C.)

33. There are, however, a limited number of situations where the receivership may be terminated before the Receiver has fully administered the estate such as where a conflict of interest exists, where the Receiver has fulfilled its duties or where continuing the receivership would be a financial drain on the estate or where the receivership is no longer necessary.

Bennett, F., *Bennett on Receiverships* at pgs. 476, 477 and 478, 19th Ed. (2016)

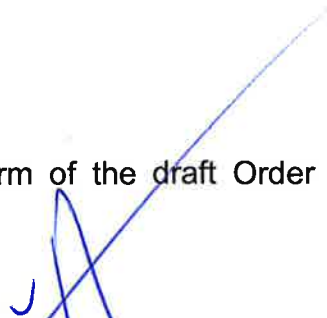
34. A receiver-manager may find himself in a situation where, without the wholehearted cooperation of some party to the action, which is not forthcoming and cannot be compelled, he is unable to function effectively as manager. In these circumstances, it is proper for the receiver/manager to apply to be discharged or to have his functions restricted to those which he can carry out.

Frisby, S. *Kerr on Receivers and Administrators* at pg. 248 17th Ed. (2009)

PART III - ORDER REQUESTED

35. The Receiver seeks an Order in the form of the draft Order attached to the Receiver's Motion Record, tab 3.

Dated: January 18, 2017



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