

COURT FILE NUMBER **2301-03129**

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS RAMBRIDGE STRUCTURE & DESIGN LTD., BRENT
ANDREW PARKER and CHRISTIANA MAY PARKER

APPLICANT BDO CANADA LIMITED, in its capacity as Court-
appointed receiver and manager of RAMBRIDGE
STRUCTURE & DESIGN LTD.

Clerk's Stamp

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C120207

**BENCH BRIEF OF BDO CANADA LIMITED, in its capacity as Court-appointed receiver and
manager of RAMBRIDGE STRUCTURE & DESIGN LTD.**

**IN SUPPORT OF THE APPLICATION BY RECEIVER FOR FINAL DISCHARGE AND
RELATED RELIEF**

TO BE HEARD BY THE HONOURABLE JUSTICE P. R. JEFFREY

December 14, 2023 at 2:00 P.M. (Commercial List)

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I. INTRODUCTION

1. The Applicant, BDO Canada Limited (“**BDO**”), in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of all the assets, undertakings and property of Rambridge Structure & Design Ltd. (“**Rambridge**”), and of the real property municipally described as Unit 605, 326 Mara Lake, Sicamous, British Columbia (the “**Mara Lake Property**”), which was formerly owned by Brent Parker and Christiana Parker (collectively, the “**Parkers**”), submits this Bench Brief in support of its application filed concurrently herewith (the “**Application**”) for, *inter alia*, the following relief:

- (a) the approval of the Receiver’s actions, conduct and activities in these proceedings, as more particularly set forth in the Third Report of the Receiver dated December 4, 2023 (the “**Third Report**”);
- (b) the approval and ratification of the Receiver and its legal counsel’s fees and disbursements from September 1, 2023 to November 30, 2023, and September 6, 2023 to November 30, 2023, respectively, as more particularly set forth in the Third Report, including the Estimated Final Fees in connection with the completion of these receivership proceedings, without the necessity of a formal passing of accounts;
- (c) the approval of the Receiver’s final receipts and disbursements as described and appended to the Third Report;
- (d) the approval and authorization for the distribution of the net proceeds received from the realization of assets in these proceedings, as more particularly set forth in the Third Report; and
- (e) the discharge of BDO, in its capacity as Receiver, upon the Receiver filing a certificate of completion confirming the completion of the Concluding Activities and, as is customary, releasing the Receiver from any and all liability arising in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the party of the Receiver.¹

¹ Unless otherwise indicated, capitalized terms used herein shall have the meanings given to them in the Application.

II. BACKGROUND

2. The factual background relevant to this Application is set out in the First Report of the Receiver dated May 17, 2023 and its Confidential Supplement (together, the “**First Report**”), the Second Report of the Receiver dated September 11, 2023 and its Confidential Supplement (together, the “**Second Report**”), and the Third Report (collectively with the First Report and the Second Report, the “**Reports**”). For brevity, the relevant facts will not be repeated herein.

III. ISSUES

3. The issues before this Honourable Court are as follows:
 - (a) Should the Receiver’s actions, conduct and activities, final receipts and disbursements, and its fees (including those of its legal counsel) be approved?
 - (b) Should the distribution of the net proceeds received from the realization of assets in these proceedings be authorized and approved?
 - (c) Should the discharge of the Receiver, subject to the completion of the Concluding Activities be approved?

IV. LAW AND ANALYSIS

A. The Receiver’s Actions, Conduct and Activities, Final Receipts and Disbursements, and Professional Fees Should be Approved

4. This Honourable Court has jurisdiction to review and approve the activities of a court-appointed receiver.² In particular, authority holds that a receiver’s conduct is to be assessed objectively, and if reasonable, prudent, and not arbitrary, this Honourable Court has the authority to approve the activities set out in the Receiver’s report.³

² *Leslie & Irene Dube Foundation Inc v P218 Enterprises Ltd*, [2014 BCSC 1855 at para 54](#), 17 CBR (6th) 41 [*Leslie*] [TAB 1].

³ *Leslie* at [para 54](#) [TAB 1].

5. Further, where a receiver has fulfilled its “prime purpose” of obtaining the best possible value for the debtor’s assets, the court will generally find that the receiver has acted properly and within its mandate.⁴
6. Since last attending before this Honourable Court (at which this Honourable Court granted the Mara Lake SAVO), the Receiver has taken several steps toward completing its mandate, including as follows:
 - (a) obtaining the British Columbia Supreme Court’s endorsement of the Mara Lake SAVO for the purpose of registering the same with the British Columbia Land Titles Office;
 - (b) completing the transaction for the sale for the Mara Lake Property and filing the Receiver’s Certificate with this Court confirming the same;
 - (c) completing a partial distribution of net sales proceeds from the Mara Lake transaction to RBC, pursuant to paragraph 9(e) of the Mara Lake SAVO;
 - (d) continuing collection efforts in respect of Rambridge’s accounts receivable and facilitating other asset realizations;
 - (e) corresponding with various stakeholders of Rambridge, including but not limited to former management, secured and unsecured creditors, equipment lessors, Canada Revenue Agency (“**CRA**”), Revenue Quebec, Service Canada, and/or respective legal counsel; and
 - (f) continuing to attend to various administrative matters in connection with its mandate.
7. The Receiver respectfully submits that these actions and activities, as fully detailed in the Third Report, are reasonable and prudent, and consistent with the Receiver’s mandate. In particular, by realizing upon Rambridge’s assets through the transactions contemplated under the Auction Agreement and the Quality PSA and, most recently, the Sale Transaction, the Receiver has maximized the value of the receivership assets for the benefit of the stakeholders, given the nature and types of assets.
8. With respect to the Receiver and its professional fees and disbursements (and those of the Receiver’s legal counsel), the general standard of review of the accounts of a court-appointed

⁴ *Re Regal Constellation Hotel Ltd*, (2004) 50 CBR (4th) 253 (Ont SCJ Comm List) at para 11, 2004 CanLII 13502 (ON SC) [TAB 2]; aff’d 2004 CanLII 206 (ON CA), 242 DLR (4th) 689 (CA) [TAB 3].

receiver is whether the amount claimed for remuneration and the disbursements incurred in carrying out the receivership are fair and reasonable.⁵ Additional factors that a court may consider when evaluating whether the receiver's fees are fair and reasonable include:

- (a) the complications and difficulties encountered;
- (b) time spent by the receiver;
- (c) the receiver's knowledge, experience and skill;
- (d) diligence and thoroughness;
- (e) responsibilities assumed;
- (f) results achieved; and
- (g) the cost of comparable services.⁶

9. The accounts of the Receiver and those of its legal counsel are summarized in the Reports and may be made available to the Court upon request. In the circumstances, having view to the Receiver's actions and activities to date (as noted above and detailed in the Third Report), the Receiver's accounts to date are fair and reasonable, and commensurate with the work required. Among other things, as detailed in the Reports, this receivership has entailed assets in multiple jurisdictions and assets not realizable by traditional sales. Similarly, the Receiver is of the view that the professional fees of its legal counsel are likewise fair and reasonable in the circumstances.

10. Accordingly, the Receiver requests that this Honourable Court approve its actions and activities to date, together with its final receipts and disbursements, and the professional fees and disbursements of the Receiver and its legal counsel.

B. The Proposed Distribution of the Net Proceeds Should be Approved and Authorized

11. In connection with the conclusion of the administration of the receivership proceedings, the Receiver proposes to distribute the net proceeds from the realization of the receivership property to Royal Bank of Canada ("RBC"), after payment of the Receiver's borrowings and professional fees and disbursements (including those of its legal counsel) and payment of certain unpaid taxes and

⁵ *Confectionately Yours Inc, Re*, [219 DLR \(4th\) 72 at para 42](#), 116 ACWS (3d) 871 [TAB 4].

⁶ *Servus Credit Union Ltd v Trimove Inc*, [2015 ABQB 745 at para 28](#), [2015] AJ No 1275 [TAB 5].

super-priorities pursuant to with the *Wage Earner Protection Program Act*⁷ and the *Alberta Personal Property Security Act*⁸ (the “**PPSA**”), as further set out in the Third Report (the “**Proposed Distributions**”).⁹

12. As described in the Reports, RBC is the senior secured creditor of Rambridge. The Receiver’s legal counsel has conducted an independent review of RBC’s security with respect to personal property, and has confirmed that it is valid and enforceable, subject to the ordinary qualifications. Additionally, RBC has funded the within proceedings through Receiver’s Certificates. The expected net proceeds available for distribution to RBC following the conclusion of the administration of the receivership proceeding is \$995,679.
13. As a corollary, the Proposed Distribution includes proceeds realized from the auction sale of inventory supplied by Dutch Lighting Innovations (“**DLI**”), in the amount of \$86,969.42 (the “**Impugned Proceeds**”). The Receiver now seeks to distribute such amount to RBC as the fulcrum secured creditor of Rambridge.
14. As set out in the Reports, DLI had previously asserted a priority or property claim over unpaid inventory that it supplied to Rambridge. DLI previously sought to adjourn the hearing of the Receiver’s application for approval of the Auction Agreement (which encompassed substantially all of Rambridge’s assets, including the unpaid DLI inventory). The Court declined DLI’s adjournment request, but directed that a provision be included in the Order approving the Auction Agreement that the net sale proceedings from the Auction arising from unpaid inventory supplied by DLI was to be held in trust pending further Order of the Court.
15. Based on prior correspondence exchanged between counsel, the Receiver understands DLI’s claim to be premised upon certain retentions of title provision in the agreement between DLI and Rambridge, under which DLI supplied certain lighting inventory to Rambridge which remained unpaid at the time of the Receiver’s appointment.¹⁰ DLI has not registered its claim over the unpaid inventory with the Alberta Personal Property Registry.¹¹

⁷ *Wage Earner Protection Program Act*, SC 2005, c 47, s 1.

⁸ *Personal Property Security Act*, RSA 2000, c P-7 [**PPSA**].

⁹ Third Report of the Receiver dated December 4, 2023 at para 37.

¹⁰ Second Report of the Receiver dated September 11, 2023 at para 39 and Appendix “D” [**Second Report**].

¹¹ Affidavit of Alice Chan, sworn on March 7, 2023 at Exhibit “H”.

16. Simply stated, the Receiver is of the view DLI's purported property claim or security interest over unpaid inventory and, consequently, the Impugned Proceeds, cannot prevail over RBC's perfected senior secured claim.
17. First, as an unpaid supplier of goods with no security agreement with Rambridge, all else being equal, DLI is an unsecured creditor. Further, DLI has not satisfied the requirements set out under section 81.1 of the *Bankruptcy and Insolvency Act*, which provides an unpaid supplier with the right of repossession where (i) the subject goods were delivered 30 days prior to the appointment of a receiver, and (ii) the supplier issued a written demand for repossession in the prescribed form within 15 days after the date of receivership appointment.¹² The unpaid DLI inventory was delivered to Rambridge over a year prior to the Receivership Date and, in any case, DLI did not issue a demand for repossession in the prescribed form within the applicable timeline.¹³
18. Second, even if DLI's claim may be characterized as a secured claim, its failure to register and perfect its security interest is determinative of to any claim of priority over the Impugned Proceeds.
19. Specifically, the *PPSA* applies to "every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral..."¹⁴ The retention of title provisions found in the agreement between DLI and Rambridge, if creating a security interest, requires DLI to comply with the applicable statutory requirements to preserve any priority claim it may wish to assert through registration, which DLI has not done.
20. Similarly, in order to maintain continued perfection of any foreign security interest after property enters Alberta, a creditor is required to comply with section 5 of the *PPSA*, which provides (in part):
 - (2) A security interest in goods perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into the Province continues perfected in the Province if it is perfected in the Province
 - (a) not later than 60 days after the goods are brought into the Province,
 - (b) not later than 15 days after the day the secured party has knowledge that the goods have been brought into the Province, or

¹² *Bankruptcy and Insolvency Act*, [RSC, 1985, c B-3, s 81.1](#) [TAB 6].

¹³ Second Report at Appendix "D".

¹⁴ *PPSA*, s [3\(1\)\(a\)](#) [TAB 7].

- (c) prior to the date that perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached,

whichever is the earliest, ... [underlining and emphasis added].

21. Indeed, subsection 5(2) of the *PPSA* has been interpreted as requiring foreign security interests to be perfected under the provincial statutory regime in order to maintain its priority in the jurisdiction. The Court used the writings of Professors Cuming and Wood in *Alberta Personal Property Security Act Handbook* to extract a description:

Section 5(2) provides for a “grace period”, or more accurately, a period of conditional temporary perfection without registration or possession by the secured party. In effect, the section recognizes that the perfected status given to the security interest under the *lex situs* at the date of creation continues for the specified period of time after the goods are brought into Alberta, so long as the prescribed reperfection measures are taken in Alberta. Accordingly, a security interest that is not perfected under the *lex situs* at the date of creation will not be recognized as being temporarily perfected in Alberta. Further, temporary perfection in the province ceases when perfection under the foreign law ceases unless the security interest has been “otherwise perfected in the Province under this Act. [underlining added]¹⁵

22. Thus, even if DLI enjoyed a security interest under a foreign legal system (such as Dutch law), any such status was lost when DLI did not re-perfect its security interest as the inventory was brought into Alberta. Consequently, the Receiver respectfully submits that the payment of Impugned Proceeds should form part of the Proposed Distribution and be paid out to RBC, as the primary secured creditor with a perfected security interest claim over Rambridge’s assets, in connection with the conclusions of the receivership proceedings.

C. The Receiver Should be Discharged

23. Finally, the Receiver seeks its discharge subject to the filing of a Receiver’s Certificate confirming the completion of the Concluding Activities as particularized in the Third Report. Of course, it is

¹⁵ *Holland v Chrysler Credit Canada Ltd*, [1992 CanLII 6188 \(AB KB\) at para 44](#), 5 Alta LR (3d) 258 [TAB 8], citing Ronald CC Cuming and Roderick J Wood, *Alberta Personal Property Security Act Handbook*, 2nd ed (Toronto Ont: Carswell, 1990) at p 54-55.

the practice of this Court to approve the discharge of a receiver where they only have relatively minor activities to complete.¹⁶ In the present instance, the Concluding Activities concern such outstanding administrative matters that the Receiver intends to attend should the requested Order be granted, and can be readily completed by the Receiver without further direction from the Court.

24. The Receiver has largely completed its mandate by, among other things, taking possession of and realizing upon the assets of Rambridge. In order to bring these proceedings to a full conclusion, the Receiver must complete the Concluding Activities, which include, *inter alia*, the distribution of the net proceeds from the sale of Rambridge's assets, payment and satisfaction of the Receiver's borrowings and professional fees and disbursements incurred, and outstanding administrative matters in relation to these proceedings.
25. Upon the completion of the Concluding Activities, the Receiver will have fulfilled its mandate as set out in the Receivership Order. Further, notwithstanding its discharge, the Receiver shall remain the Receiver for the performance of such incidental duties as may be required for the administration of the receivership proceedings. In these circumstances, it is just and appropriate for the Receiver to be discharged subject to the filing of the proposed Receiver's Certificate, as a further discharge application would result in unnecessary costs for the receivership estate.
26. Accordingly, the Receiver respectfully submits that the Court approve the Receiver's discharge once the Concluding Activities have been completed and the Receiver's Certificate is filed.

V. CONCLUSION


27. The Receiver respectfully requests that this Honourable Court grant an Order in the form attached as Schedule "B" to the Application, for (i) the approval of the Receiver's actions, conduct and activities, final receipts and disbursements, and professional fees and disbursements (including

¹⁶ *Re Leigh Commercial Builders Inc* (8 September 2021), Court File Number 2003-01472 Judicial Centre Edmonton (Burns J) at para 8 [TAB 9]; *Re Copperline Excavating Ltd* (25 October 2021), Court File Number 2003-03284 Judicial Centre Edmonton (Shelley J) at para 9 [TAB 10].

those of the Receiver's counsel), (ii) approval of the Proposed Distribution, which shall direct the net proceeds of the within estate to RBC, and (iii) the discharge of BDO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of December, 2023.

BORDEN LADNER GERVAIS LLP

Per: 

Jack R. Maslen / Tiffany E. Bennett
Counsel for BDO CANADA
LIMITED, solely in its capacity as
Court-appointed receiver and manager
of RAMBRIDGE STRUCTURE &
DESIGN LTD. and not in its personal
capacity

TABLE OF AUTHORITIES

<u>TAB</u>	<u>AUTHORITY</u>
1.	<i>Leslie & Irene Dube Foundation Inc v P218 Enterprises Ltd</i> , 2014 BCSC 1855, 17 CBR (6th) 41
2.	<i>Re Regal Constellation Hotel Ltd</i> , (2004) 50 CBR (4th) 253 (Ont SCJ Comm List), 2004 CanLII 13502 (ON SC)
3.	<i>Re Regal Constellation Hotel Ltd</i> , 2004 CanLII 206 (ON CA), 242 DLR (4th) 689 (CA)
4.	<i>Confectionately Yours Inc, Re</i> , 219 DLR (4th) 72, 116 ACWS (3d) 871
5.	<i>Servus Credit Union Ltd v Trimove Inc</i> , 2015 ABQB 745, [2015] AJ No 1275
6.	<i>Bankruptcy and Insolvency Act</i> , RSC, 1985, c B-3
7.	<i>Personal Property Security Act</i> , RSA 2000, c P-7
8.	<i>Holland v Chrysler Credit Canada Ltd</i> , 1992 CanLII 6188 (AB KB), 5 Alta LR (3d) 258
9.	<i>Re Leigh Commercial Builders Inc</i> (8 September 2021), Court File Number 2003-01472 Judicial Centre Edmonton (Burns J)
10.	<i>Re Copperline Excavating Ltd</i> (25 October 2021), Court File Number 2003-03284 Judicial Centre Edmonton (Shelley J)