

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

**FIRST REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED
AS RECEIVER**

November 14, 2016

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1.0 Introduction and Purpose of Report

1.1 Introduction

1.1.1 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**”). A copy of the August 4, 2016 Order (the “**Initial Order**”) is attached as **Appendix A**.

1.1.2 Without obligating the Receiver, the Initial Order authorized the Receiver to, among other things, do the following:

- take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- monitor the Property and business of the Debtors;
- market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- sell, convey, transfer, lease or assign the Property or any part or parts thereof with the approval of the Court; and
- apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property.

1.2 Purpose of Receiver’s First Report

1.2.1 This constitutes the Receiver’s **First Report** to the Court in this matter and it is filed to:

- report on the Receiver’s activities since its appointment and seek this Honourable Court’s approval of the conduct of the Receiver and its agents as outlined in this First Report; and
- to provide information to the Court relevant to the Debtor’s motion to, among other things, seek an Order rescinding and/or discharging the appointment of the Receiver.

2.0 Initial Receiver Activities

2.1 Background

- 2.1.1 Mara Tech provides fueling and ground support services to various airlines. Airlines serviced 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.
- 2.1.2 Services provided include baggage handling, de-icing of aircraft with glycol, heating and cooling of airplane cabins when parked, supply of electricity to aircraft while parked, and local deliveries of air freight. Mara Tech is also a World Fuel Services Canada, ULC (formerly Imperial Oil) aviation fuel dealer servicing airlines in Sault Ste. Marie and Sudbury.
- 2.1.3 Following its' appointment, the Receiver was advised that the operations of Mara Tech Aviation Fuels (Thompson) Ltd. had ceased during September 2015 (with no remaining assets).
- 2.1.4 The Receiver has obtained an independent legal opinion regarding the Royal Bank of Canada ("RBC"), L.A.K.E.S. Leasing Corporation ("LAKES"), and Kubota Canada Ltd. ("Kubota") security registered in Ontario. It confirms that corresponding Loan Agreements, Security Agreements, Postponement and Assignment of Claim Agreements, and Guarantee and Postponement of Claims are properly executed and good and enforceable in accordance with their terms and that the security interests provided therein were perfected by registration pursuant to the provisions of the PPSA. Attached as **Appendix B** is a true copy of the independent legal opinion dated September 16, 2016.
- 2.1.5 In reference to the RBC security, there are cross guarantees amongst certain of the Mara Tech entities in favour of Mara Tech Aviation Fuels (Sudbury) Ltd. and Mara Tech Aviation Fuels Ltd. (as further detailed in Appendix B).
- 2.1.6 The following table sets out the approximate amounts owing to RBC (inclusive of professional costs incurred by RBC to November 3, 2016), LAKES, and Kubota, by respective entity:

	Operating Location	RBC	LAKES	Kubota
Mara Tech Aviation Fuels Ltd.	Sault Ste. Marie, ON	\$84,168.63	\$78,081.15	N/A
Mara Tech Aviation	Sault Ste. Marie, Sudbury, North	\$258,199.09	As above	\$66,136.80

Services Ltd.	Bay, & Windsor, ON			
Mara Tech Aviation Fuels (Thompson) Ltd.	Operations Ceased September 2015	\$82,048.30	N/A	N/A
Mara Tech Aviation Fuels (Sudbury) Ltd.	Sudbury, ON	\$188,074.77	As above	N/A
Totals		\$612,490.79	\$78,081.15	\$66,136.80

2.2 Initial Activities

- 2.2.1 Immediately following its' appointment, the Receiver attended the personal residence of John and Sheila Marandola, Principals of Mara Tech (the "**Principals**"), and served them with a copy of the Initial Order (the "**Initial Meeting**"). Given the nature of Mara Tech's operations (fueling and servicing of commercial airlines), and its' inherent risks, the Receiver had predetermined that it would not operate the business.
- 2.2.2 During the Initial Meeting, the Receiver was presented with a Commitment Letter dated June 24, 2016 (the "**Commitment Letter**") from a private lender Baron Finance ("**Baron**") indicating that Mara Tech was on the cusp of completing a refinancing (envisioned in the amount of up to \$850,000) with such financing reportedly sufficient to satisfy all creditors, as advised by John Marandola. A copy of the Commitment Letter dated June 24, 2016 is attached as **Appendix C**.
- 2.2.3 Based on the content of the Commitment Letter, and representations made by John Marandola in terms of the quantum of envisioned financing vs. creditor obligations, and by reason of the inherent operating risks noted above, the Receiver elected to not take possession or exercise control over the Property, thereby permitting the Debtors to remain in possession and control of their respective businesses and day to day operations.
- 2.2.4 Given its' mandate pursuant to the Initial Order, to evaluate both liquidation value and the refinancing as envisioned by the Commitment Letter (in particular the quantum of envisioned financing vs. creditor obligations), the Receiver supplied Mara Tech with a list of Information Requirements on August 5, 2016. A copy of the Receiver's list of Information Requirements is attached as **Appendix D**.
- 2.2.5 On August 15, 2016, the Receiver issued its' Notice and Statement of Receiver (each respective entity) as required under the Bankruptcy and Insolvency Act. Consolidated trade creditor exposure (as advised by the Debtors) totaled \$8,267.94. Copies of the respective Notices are attached as **Appendix E**.

2.3 Refinancing Initiative

- 2.3.1** Following its' appointment, with the consent of Mara Tech, the Receiver initiated contact with Baron to discuss the terms and quantum of available financing (originally envisioned in the amount of up to \$850,000 supported by a combination of an accounts receivable factoring facility, an inventory facility, and an equipment facility). Baron advised the Receiver that it was in the process of completing associated due diligence and that a further Commitment Letter would follow.
- 2.3.2** On August 9, 2016, a revised proposal was received from Baron envisioning financing of up to \$1,150,000 (combination of an accounts receivable factoring facility, an equipment facility, and a real estate facility). A copy of the Commitment Letter dated August 9, 2016 is attached as **Appendix F**.
- 2.3.3** On August 30, 2016, a further revised proposal was received from Baron envisioning financing of up to \$812,000 (limited to an accounts receivable factoring facility and a real estate facility). The primary form of security required by Baron was in the form of mortgages over real estate owned by the Principals' personally. A copy of the Commitment Letter dated August 30, 2016 is attached as **Appendix G**.
- 2.3.4** In connection with the Commitment Letter dated August 30, 2016, and through subsequent discussion with Baron and Mara Tech, the Receiver was advised that Baron were prepared to provide an initial advance of \$512,000 given collateral limitations (in particular accounts receivable in support of the factoring facility). Based on the foregoing, the quantum of available financing was insufficient to satisfy Mara Tech's creditors.
- 2.3.5** As noted above, the primary form of security required by Baron was in the form of mortgages over real estate owned by the Principals' personally. On September 14, 2016, RBC obtained Summary Judgment against Mara Tech and the Principals' personally (with Writs subsequently filed) effectively encumbering the properties over which Baron intended to take as security. The quantum of the Judgment's (on a consolidated basis) approximated \$494,000 plus interest. As a result, the Baron financing proposal did not move forward on the terms envisioned.

2.4 Monitoring of Operations

- 2.4.1** Paragraph 3 (c) of the Initial Order empowers and authorizes the Receiver to monitor the Property and business of Debtors. The Receiver, to a large extent, has been unable to effectively monitor the business and in particular cash flow from operations.
- 2.4.2** As noted above, the Receiver supplied Mara Tech with a list of Information Requirements on August 5, 2016. Despite repeated follow up, much of this information remains outstanding. In particular, the Debtors have not provided forecasted cash flows or otherwise produced current financial reporting following the Receiver's appointment.
- 2.4.3** Given the lack of cooperation, or otherwise the inability to produce the requested financial information, the Receiver attended Mara Tech's accounting office in St. Catharines on August 31, 2016 and provided the Debtor's bookkeeper with a cash flow

template for monitoring purposes (to be populated by Mara Tech). To date, the Receiver has not been provided with a populated cash flow template.

- 2.4.4 By letter dated September 27, 2016, the Receiver's counsel wrote to Mara Tech's counsel regarding the outstanding Information Requirements. A copy of this letter, along with the response of Mara Tech's counsel, are attached as **Appendices H** and **I** respectively.
- 2.4.5 At present, Mara Tech remain in possession and control of their respective businesses and day to day operations (including the accounting function). On October 18, 2016, the Receiver was advised by Mara Tech's bookkeeper that there had been no bookkeeping completed since July 31, 2016 and that the May 31, 2016 bank reconciliation was still in process.
- 2.4.6 Following the appointment of the Receiver, on or about August 30, 2016, Imperial Oil switched to a prepayment system whereby Mara Tech was required to prepay for fuel deliveries. Based on the Receiver's communications with John Marandola and Mara Tech's bookkeeper, this has severely constricted cash flow to the point where Mara Tech are struggling to fund current obligations including payroll.
- 2.4.7 The Receiver understands that Mara Tech maintains a single operating bank account with TD Bank resulting in comingling of receipts and disbursements for each respective entity (making a determination of respective cash flow and profitability difficult). The Receiver is aware that on at least one occasion the Principals' injected (and subsequently withdrew) personal funds to cover payroll. Further, the Receiver has received several notifications from Canada Revenue Agency ("**CRA**") of returned (NSF) cheques intended as payment towards GST/HST and employee source deduction obligations.
- 2.4.8 The Receiver understands that the Debtors have not made any principal or interest payments to RBC (the primary secured creditor) for a period of 12 months or more.
- 2.4.9 The Receiver has not been provided with any updated financial information or bank account activity since October 12, 2016. A copy of the Receiver's most recent information request, dated October 31, 2016, is attached as **Appendix J** (which remains outstanding).
- 2.4.10 Based on the foregoing, the Receiver has been unable to determine with certainty the current financial position, cash flow from operations, or financial viability of Mara Tech. Based on known information, the Receiver is concerned regarding Mara Tech's ability to fund its' current obligations or otherwise continue operating given cash flow constraints (with creditor exposure increasing in the interim).

2.5 Appraisals

- 2.5.1 To evaluate prospects of realization in a liquidation scenario, with the consent of Mara Tech, the Receiver commissioned an appraisal of equipment and operating assets located at each of the four airport facilities. The appraised value of equipment and operating assets is not sufficient to satisfy Mara Tech's outstanding creditor obligations and liabilities.

2.6 Independent Counsel

2.6.1 The Receiver has retained SimpsonWigle LAW LLP as independent counsel to provide advice and assistance with respect to receivership matters.

2.7 Potential Priority Claims

2.7.1 The following table summarizes reported priority payable exposure as at August 9, 2016 (based upon online CRA statements supplied by Mara Tech's bookkeeper):

Company:	Source Deductions:	GST/HST:
MARA TECH AVIATION FUELS LTD.	\$25.59	NIL
MARA-TECH AVIATION SERVICES LTD.	\$100,760.11	\$235.45
MARA TECH AVIATION FUELS (THOMPSON) LTD.	\$6,340.41 (cheque previously issued to CRA which remains outstanding)	NIL
MARA TECH AVIATION FUELS (SUDBURY) LTD.	\$117.74	\$124.76
Totals	\$107,243.85	\$360.21

2.7.2 On or about September 7, 2016, the Receiver was provided with CRA Notices of Assessment with respect to GST/HST totaling \$79,656.78 indicating a significant deterioration to amounts outstanding as of August 9, 2016.

2.7.3 Further, on October 24, 2016, the Receiver received notification from CRA of returned payments from Mara Tech totaling \$32,448.95 (GST/HST) and \$15,045.00 (employee source deductions) indicating a further deterioration.

2.7.4 Following its appointment, the Receiver coordinated scheduling of trust examinations with CRA and Mara Tech with such examinations being conducted on or about September 27, 2016. At present, the Receiver awaits results of the aforementioned trust examinations to confirm priority payable obligations.

2.7.5 Any possible claim by CRA for unpaid GST/HST or unpaid employee source deductions would be deemed to be held in trust for the Crown separate and apart from the property of the Debtors and from property held by any secured creditor of the Debtors that, but for a security interest, would be property of the Debtors, pursuant to section 227(4) of the Income Tax Act (Canada) and section 221(1) of the Excise Tax Act (Canada).

2.7.6 Mara Tech employs approximately 95 employees. Certain of these employees are party to a collective bargaining agreement. In the event operations cease, Mara Tech's employees may be entitled to make claims under the Wage Earner Protection Program for

wages, salaries, commissions or compensation for services rendered during the six month period prior to the date of receivership. Such claims are secured to the extent of \$2,000 per employee over Mara Tech's current assets. Service Canada, as the administrator of the Wage Earner Protection Program, are included on the service list for this motion.

3.0 Marketing and Sale of the Property

3.1 Unsolicited Expression of Interest

- 3.1.1** Following its' appointment, the Receiver was contacted by a competitor in the industry who expressed an interest in acquiring Mara Tech as a going concern (the "**Prospective Purchaser**") including the re-hiring of most if not all of the Debtors' current employees. On September 2, 2016, the Prospective Purchaser entered into a "Confidentiality and Non-Disclosure Agreement" with the Receiver and was provided with certain historical financial information obtained from Mara Tech in order to complete due diligence.
- 3.1.2** On September 12, 2016, by way of e-mail, the Prospective Purchaser submitted a written "Expression of Interest" in an amount greatly exceeding liquidation value. The "Expression of Interest" was communicated to Mara Tech and their counsel (in general terms) who were not receptive to a going concern sale of the business.
- 3.1.3** Given the status of the Baron financing proposal (effectively no longer an option), in the interest of maximizing realization for the stakeholders (the alternative being liquidation), the Receiver was of the view that a going concern sale of the business would generate the best possible recovery. In order to further canvass the market, the Receiver implemented the following marketing strategy.

3.2 The Receiver's Marketing Strategy

- 3.2.1** Pursuant to the Initial Order, the Receiver is authorized to market for sale any or all of the Property and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- 3.2.2** In recognition that the Property is a unique asset, with a specific and limited pool of potential purchasers, the Receiver concluded that it would undertake a focused marketing program targeting the existing Imperial Oil dealer network (consisting of 15 targets).
- 3.2.3** In connection with its marketing strategy, to assist potential purchasers in their evaluation of the purchase opportunity, the Receiver implemented an online data room providing particulars of the Property, operations, and historical financial information.
- 3.2.4** Commencement of the Receiver's marketing program (and further negotiation with the Prospective Purchaser) was delayed due to the timing of receipt of certain contracts from Mara Tech (originally requested on August 5, 2016). Specifically, fuel contracts, airline contracts, and the union contract were not received until September 28, 2016. The

Receiver was ultimately required to contact the various airport facilities directly to obtain occupancy lease agreements (received throughout the month of October 2016).

- 3.2.5 On October 13, 2016, the Receiver wrote to Mara Tech and Mara Tech's counsel providing notification of its' intention to market the Property of Mara Tech for sale effective immediately. Mara Tech was invited to participate in the sales process and was also asked to provide the names and contact information for anyone who may have an interest in the property of Mara Tech. Mara Tech elected not to participate in the sales process or otherwise identify any potential purchasers. A copy of the Receiver's letter is attached as **Appendix K**.
- 3.2.6 The Receiver's focused marketing program commenced October 13, 2016 and concluded on November 4, 2016. Potential purchasers were contacted by way of an e-mail teaser and were invited to contact the Receiver in order to be provided with access to the online data room to evaluate the opportunity. A copy of the Receiver's e-mail teaser is attached as **Appendix L**.

4.0 Offer Received

4.1 Marketing Results

- 4.1.1 As a result of its marketing efforts, the Receiver was contacted by a total of 4 potential purchasers. Signed confidentiality agreements were received from each of these potential purchasers who were then provided with access to the Receiver's online data room.
- 4.1.2 A single offer with deposit was received on November 4, 2016 utilizing the Receiver's form of Agreement of Purchase and Sale ("APS"). The offer contains certain terms and conditions and the Receiver is presently in negotiation with the potential purchaser in order to establish terms and conditions agreeable to both parties. Based on negotiations to date, the Receiver contemplates that the Receiver and potential purchaser will reach agreement with respect to an APS. The APS will be conditional on court approval. Once the terms and conditions of the APS are finalized, and prior to court approval, the Receiver independently, or in conjunction with the potential purchaser, will communicate with Mara Tech's customers, suppliers, landlords, and employees with a view to furthering the transaction which is the subject of the APS.
- 4.1.3 The offer provides a purchase price which greatly exceeds liquidation value, envisions the re-hiring of most if not all of the Debtor's current employees, and is the best prospect of realization for the stakeholders.

5.0 Professional Fees

5.1 Fees of the Receiver and the Receiver's Independent Legal Counsel

- 5.1.1** Pursuant to Paragraph 18 of the Initial Order, any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees and disbursements of the Receiver and those of its legal counsel, shall be allowed on a passing of accounts and constitute the Receiver's Charge.
- 5.1.2** For the period ended November 4, 2016, the Receiver has incurred fees and disbursements of \$93,698.21, inclusive of disbursements and HST.
- 5.1.3** For the period ended November 4, 2016, the Receiver's counsel, SimpsonWigle LAW LLP, has incurred fees and disbursements of \$29,780.00, inclusive of disbursements and HST.

6.0 Order Sought

- 6.1** The Receiver submits this First Report to this Honourable Court in support of its motion requesting this Honourable Court to grant:
- a) an Order approving the First Report of the Receiver and the conduct of the Receiver and its agents as outlined in this First Report.

All of which is respectfully submitted this 14th day of November, 2016.

**BDO CANADA LIMITED
COURT APPOINTED RECEIVER OF THE PROPERTY OF
MARA TECH AVIATION FUELS LTD.,
MARA TECH AVIATION SERVICES LTD.,
MARA TECH AVIATION FUELS (THOMPSON) LTD., and
MARA TECH AVIATION FUELS (SUDBURY) LTD.**



Per: Christopher Mazur, CIRP, LIT
Partner/Senior Vice President