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Justice D. B. Nixon 102408
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Oct 28, 2021



COURT FILE NUMBER 2101-02280
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ROYAL BANK OF CANADA
DEFENDANT PEOPLE EXPRESS TRANSPORT LTD.

AND IN THE MATTER OF THE RECEIVERSHIP OF
PEOPLE EXPRESS TRANSPORT LTD.

APPLICANT ALVAREZ & MARSAL CANADA INC., in its capacity as
Court-appointed Receiver and Manager of the assets,
undertakings and properties of PEOPLE EXPRESS
TRANSPORT LTD.

DOCUMENT **APPLICATION**
**(Interim Distribution & Approval of Receiver's Actions,
Conduct and Fees Order)**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Torys LLP
4600 Eighth Avenue Place East
525 - Eighth Ave SW
Calgary, AB T2P 1G1

Attention: Kyle Kashuba
Telephone: +1 403.776.3744
Fax: +1 403.776.3800
Email: kkashuba@torys.com
File Number: 39108-2009

NOTICE TO RESPONDENT(S):

This Application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the Application is heard as shown below:

Date:	Thursday, October 28, 2021
Time:	10:30 a.m.
Where:	Calgary Courts Centre
Before Whom:	Justice D.B. Nixon, of the Commercial List

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of People Express Transport Ltd. (the “**Debtor**”), seeks an Order in substantially the same form as that attached as Schedule “**A**” to this Application, granting the following relief and directions:
 - 1.1 abridging, if necessary, the time for service of this Application and deeming service good and sufficient;
 - 1.2 authorizing the Receiver to make a distribution of funds realized by the Receiver to the lien claimants described in the Third Report (including setting off the amount owed by the Debtor to Ward Tires Inc. described in the Third Report) and to the Royal Bank of Canada (“**RBC**”), as an interim distribution and partial repayment of the indebtedness owing to RBC by the Debtor;
 - 1.3 directing the lien claimants described in the Third Report whose lien claims have been or will be paid to discharge their registrations with the Alberta Personal Property Registry against the Debtor;
 - 1.4 approving the actions, conduct and activities of the Receiver to date in respect of the administration of the Debtor’s receivership estate, as reported in the Third Report of the Receiver, dated and filed October 18, 2021 (the “**Third Report**”);
 - 1.5 approving the professional fees, receipts and disbursements of the Receiver, and those of the Receiver’s legal counsel, as set forth in the Third Report;
 - 1.6 approving the previously undertaken and proposed go-forward actions, conduct and activities of the Receiver and those of the Receiver’s legal counsel, as set out and described in the Third Report;
 - 1.7 amending paragraph 3 of the Consent Receivership Order (defined below), to expand the Receiver’s powers to empower and authorize, but not obligate, where the Receiver considers it necessary or desirable, to:
 - (i) file an assignment in bankruptcy on behalf of the Debtor; and
 - (ii) consent on behalf of the Debtor to the making of a bankruptcy order against the Debtor; and
 - 1.8 granting leave to the Receiver to apply or reapply to this or any court or administrative body in any province of Canada for advice, assistance and directions as may be necessary to carry out the terms of the Order sought.
2. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

Grounds for making this Application:

3. On April 22, 2021, following the Application of the RBC, A&M was appointed as Receiver over the Property of the Debtor, by Order of the Honourable Madam Justice L.B. Ho (the “**Consent Receivership Order**”).

Interim Distribution to the Lien Claimants and RBC

4. The Receiver’s legal counsel has reviewed documentation related to the lien claimants as more particularly described in the Third Report and has determined that the subject lien claimants have or likely have a valid lien claim against the Debtor.
5. The Receiver’s legal counsel has reviewed RBC’s loan and security documents, and on May 14, 2021 provided a Security Review Memorandum to the Receiver, that concluded, subject to certain qualifications and assumptions set forth therein, that RBC’s security forms a valid and first position security interest in the Debtor’s assets.
6. On July 6, 2021, the Receiver was granted an Auction Approval and Vesting Order by Justice B.E.C. Romaine (the “**Auction Approval Order**”), that approved the Auction Agreement (as defined in the Auction Approval Order) relating to the sale of substantially all of the Debtor’s assets.
7. These transactions have now been completed and have closed, and the Receiver is in the possession of funds representing the sale proceeds from these transactions.
8. A distribution to the lien claimants and an interim distribution to RBC at this time, as set out and described in the Third Report, is just and appropriate.
9. The terms as set out in the proposed form of Order attached hereto as Schedule “**A**” to this Application are necessary to effect the interim distribution to RBC, as contemplated by the Receiver.

Approval of Actions, Conduct and Fees

10. The efforts of the Receiver in relation to the matters discussed and more particularly set out in the Third Report, including, without limitation, in relation to the Receiver’s efforts made in connection with the auction process, garage keepers’ lien analysis, employment matters, accounts payable/receivable matters, the residential property registered under the Debtor’s name, have been or will be duly undertaken as part of the Receiver’s Court-ordered mandate in these proceedings.
11. All of the actions and conduct in respect of the fees and disbursements incurred by the Receiver and its legal counsel during the course of the administration of the within proceedings as reported in the Third Report are reasonable and necessary, and have been validly undertaken and incurred in connection with the conduct of the Receiver’s obligations herein in relation to the Property.

Expansion of the Receiver's Powers

12. The Receiver is not expressly authorized by the Consent Receivership Order to file an assignment in bankruptcy on behalf of the Debtor; however, such powers are common and typically included in receivership orders.
13. Upon a review of certain new claims that have been made against the Debtor, details of which are set forth in the Third Report, the Receiver has determined that the potential assignment of the Debtor in bankruptcy would be beneficial to the receivership estate and other stakeholders, as described in the Third Report.
14. Thus, should the Receiver be required to file an assignment in bankruptcy on behalf of the Debtor, it is fair and appropriate for this Honourable Court to grant an order authorizing the Receiver to file an assignment in bankruptcy.
15. This Honourable Court has jurisdiction to grant the relief sought pursuant to subsections 47.1(2)(c) and (d) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“**BIA**”), which authorize this Honourable Court to direct the Receiver to “exercise such control over [the debtor’s] property, and over the debtor’s business, as the court considers advisable,” and to “take conservatory measures”.
16. Filing an assignment in bankruptcy on behalf of the Debtor constitutes an exercise of control over the Debtor’s property and business, and also constitutes a conservatory measure, to protect and enable the realization of the Debtor’s assets for the benefit of its creditors.
17. Should this Honourable Court grant the Receiver the ability to assign the Debtor into bankruptcy, it is the intention of the Receiver to have the option, but not the obligation, to guarantee, at its sole and absolute discretion, the fees and costs of the licensed insolvency trustee to administer the estate – this is supported by RBC, as fulcrum creditor in the Receivership Proceedings.
18. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

19. All pleadings and proceedings filed in the within action, including the Consent Receivership Order and the Auction Approval Order.
20. The Third Report of the Receiver, filed.
21. The proposed form of Order attached as Schedule “**A**” to this Application.
22. The inherent jurisdiction of this Honourable Court to control its own process.
23. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

24. Rules 1.3, 6.3(1), 6.47(e) and (f), 6.9(1)(b), 11.27, 11.29 and 13.5 and the *Bankruptcy and Insolvency General Rules*, CRC 1985, c 368, as amended thereof, and such further and other Rules as counsel may advise and that this Honourable Court may permit.

Applicable Acts and regulations:

25. BIA, as amended, the *Judicature Act*, RSA 2000, c J-2, as amended, and such other Rules, Acts and Regulations as counsel may advise and that this Honourable Court may permit.

Any irregularity complained of or objection relied on:

26. None.

How the Application is proposed to be heard or considered:

27. Oral submissions by counsel at an Application in Justice Chambers as agreed and scheduled by counsel, before Justice D.B. Nixon of the Commercial List, at the Calgary Courts Centre, 601 - 5th Street SW, at Calgary, Alberta, on Thursday, October 28, 2021 at 10:30 a.m. or as soon thereafter as counsel may be heard.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this Application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the Application is heard or considered, you must reply by giving reasonable notice of the materials to the Applicant.

SCHEDULE “A”

**FORM OF INTERIM DISTRIBUTION & APPROVAL OF RECEIVER’S ACTIONS,
CONDUCT AND FEES ORDER**

(See attached)

COURT FILE NUMBER 2101-02280

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANT PEOPLE EXPRESS TRANSPORT LTD.

Clerk's Stamp

DOCUMENT **ORDER**
(Interim Distribution & Approval of
Receiver's Actions, Conduct and Fees)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Torys LLP
4600 Eighth Avenue Place East
525 - Eighth Ave SW
Calgary, AB T2P 1G1

Attention: Kyle Kashuba
Telephone: +1 403 776 3744
Facsimile: +1 403 776 3800
Email: kkashuba@torys.com
File Number: 39108-2009

DATE ON WHICH ORDER WAS PRONOUNCED: October 28, 2021

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Justice D.B. Nixon

UPON THE APPLICATION by Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the assets, undertakings and properties of People Express Transport Ltd. (the "**Debtor**") for, amongst other things, an order approving a distribution of funds by the Receiver and the actions, conduct and activities of the Receiver; **AND UPON HAVING READ** the Consent Receivership Order dated April 22, 2021, the Third Report of the Receiver dated and filed October 18, 2021 (the "**Third Report**"), the Affidavit of Service of Rachel Dingman, to be filed, and any other material and evidence filed to date in the within proceedings; **AND UPON HEARING** the submissions of counsel for the Receiver, and from any other interested parties who may be present, with no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service; **AND UPON IT**

APPEARING that all interested and affected parties have been served with notice of this Application;

IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this Application and time for service of this Application is abridged to that actually given.

Interim Distribution to Lien Claimants and RBC

2. The Receiver is hereby authorized to make a distribution of funds realized by the Receiver in the course of the administration of these proceedings to the lien claimants described in the Third Report (and set off the amount owed by the Debtor to Ward Tires Inc. described in the Third Report) and to the Royal Bank of Canada ("**RBC**"), as an interim distribution and in partial repayment of the indebtedness owing to RBC by the Debtor, as set out and described in the Third Report, subject to the Receiver holding sufficient funds to satisfy the administrative costs of the receivership proceedings, and valid statutory deemed trust and priority claims.
3. The lien claimants described in the Third Report whose lien claims have been or will be paid are hereby directed to discharge their registrations with the Alberta Personal Property Registry against the Debtor forthwith, at their sole cost and expense.

Approval of the Actions, Conduct and Activities and Fees and Disbursements of the Receiver

4. The actions, conduct and activities of the Receiver as reported in the Third Report are hereby authorized and approved.
5. The professional fees, receipts and disbursements of the Receiver and the Receiver's legal counsel, Torys LLP, as summarized in the Third Report, are fair and reasonable and are hereby approved and ratified.
6. The previously undertaken and proposed go-forward actions, activities and conduct of the Receiver and those of the Receiver's legal counsel, as described in the Third Report, are hereby approved.

Receiver's Powers to related to the Bankruptcy of the Debtor

7. Paragraph 3 of the Consent Receivership Order shall be amended to incorporate paragraph 3(s) as a sub provision stating that the Receiver is hereby expressly empowered and authorized, but not obligated, where the Receiver considers it necessary or desirable:

- (s) to file an assignment in bankruptcy on behalf of the Debtor; and consent on behalf of the Debtor to the making of a bankruptcy order against the Debtor. The Receiver is solely authorized and empowered to exercise the powers set out in this order to the exclusion of all other persons, including the Debtor, and without interference from any other person. Nothing in this order or any prior order in these proceedings shall be interpreted as precluding A&M from acting as trustee in bankruptcy and/or, at its sole and absolute discretion, A&M is permitted (but not obligated) to guarantee the fees and costs of the licensed insolvency trustee to administer the estate;

Miscellaneous

8. The Receiver shall be at liberty to reapply for further advice, assistance and direction from this Honourable Court as may be required to enforce or to carry out the terms of this Order.
9. This Order must be served only upon those interested parties attending or represented at the within Application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
10. Service of this Order on any party not attending this Application is hereby dispensed with.

Justice of the Alberta Court of Queen's Bench