

CITATION: Portage Capital Nominee Corp. v. R & B Properties (2011) Inc.,
2026 ONSC 1826
COURT FILE NO.: CV-25-00753615-00CL
DATE: 20260325

ONTARIO SUPERIOR COURT OF JUSTICE

RE: PORTAGE CAPITAL NOMINEE CORP.,
Applicants

-and-

R & B PROPERTIES (2011) INC.,
Respondent

BEFORE: FL Myers J

COUNSEL: *Peter-Paul E. Du Vernet*, for the Respondent

Maria Konyukhova and Brittany Ketwaroo, for KSV
Restructuring Inc., Receiver

Chris Burr, for the Applicant

HEARD: March 24, 2026

ENDORSEMENT

- [1] The Receiver seeks an order requiring the debtor R&B and its principal Mr. Daniel Rumack to pay to the Receiver \$143,000 that was in the possession of the debtor when the receivership order was made and served upon them.
- [2] The debtor submits that the funds are not within the defined term “Property” that is subject to the receivership order dated January 13, 2026.
- [3] Three provisions of the receivership order are relevant. They are set out here showing emphasis that I have added:

- [4] The preamble of the order commences as follows:

THIS APPLICATION made by Portage Capital Nominee Corp. (the "Applicant") for an Order...appointing KSV Restructuring Inc. as receiver and manager... of: (i) real property known municipally as 761 Queen Street West, Toronto, ON...(the "Real Property"), (ii) **all of the personal property of R & B Properties (2011) Inc. (the "Debtor") which is located at or related to or used or acquired in connection with or arising from or out of the Real Property,** and (iii) the proceeds of (i) and (ii) ((i) through (iii), inclusive, being collectively, the "Property"), was heard this day by judicial videoconference.

- [5] Para. 3 of the receivership order provides, in part:

...the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) **to take possession of and exercise control over the Property** and any and all proceeds, receipts and disbursements arising out of or from the Property;

...

and in each case **where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.**

- [6] Finally, para. 4 of the receivership order says:

**DUTY TO PROVIDE ACCESS AND CO-OPERATION
TO THE RECEIVER**

4. THIS COURT ORDERS that (i) **the Debtor**, (ii) **all of its current and former directors, officers, employees...**and (iii) all other individuals, firms, corporations, ...having notice of this Order... **shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control...and shall deliver all such Property to the Receiver upon the Receiver's request.**

- [7] Together, these paragraphs provide that the Receiver is entitled to possession of all personal property of the debtor acquired in connection with or arising from or out of its building on Queen St. West. If the Receiver takes possession of Property, it is exclusively entitled to do so without interference by anyone. The debtor and Mr. Rumack are required to forthwith advise the Receiver of any Property in their possession and to deliver it to the Receiver upon request.
- [8] It is self-evident that if the \$143,000 is personal property that was “acquired in connection with or arising from or out of” the debtor’s building, then the Receiver is entitled to it.
- [9] It is common ground that the \$143,000 was paid to the debtor by its tenant the Beer Store as part of a settlement to allow the tenant to terminate its lease. The settlement was for \$1,000,000 plus HST of \$143,000. The HST payment on the lease settlement amount is the \$143,000 in issue on this motion.
- [10] These funds are plainly funds arising from or out of the debtor’s building – its real property. The funds are tax exigible on a payment arising from the tenant’s obligations in respect of a unit in the building. As such, I find that the \$143,000 falls within the definition of “Property” in the preamble to the receivership order.
- [11] The Beer Store paid the settlement funds to the debtor prior to the receivership commencing. The funds were in the possession of the debtor or Mr. Rumack for the debtor at the commencement of the receivership. Mr. Rumack paid over the \$1,000,000 to the Receiver.

- [12] It is apparent that Mr. Rumack is concerned that if he pays the HST money to the Receiver, the Receiver may not pay it to the CRA. That is a reasonable concern. There are arguments that the applicant - as first mortgagee - has priority over the CRA's statutory deemed trust in the HST payment.
- [13] Regardless of that issue, if the debtor is assigned into bankruptcy, then the deemed trust will not bind the trustee and, again, the first mortgagee's claim will likely have priority ahead of the claim of the CRA.
- [14] Mr. Rumack is aware that corporate directors can have personal liability for unpaid HST. He therefore wants the HST to be paid to CRA to avoid the possibility that the CRA comes after him for a shortfall if the \$143,000 is not paid to the CRA but to others with higher priority claims.
- [15] Mr. Du Vernet submits that the receivership order speaks prospectively. As such, it does not catch funds that were paid to the debtor before the receivership order was granted in connection with a transaction that was already concluded by that time. Furthermore, he submits that since the CRA has a statutory deemed trust over HST payments in the hands of the debtor, the funds are not personal property of the debtor that fall within the definition of "Property" in the receivership order.
- [16] Counsel presented no case law to support either submission. Neither is correct in my view.
- [17] First, even if the receivership order only speaks from the time it is granted, its reach includes property in the possession of the debtor on that day. It does not matter how the money or goods came into the possession of the debtor. All its property came into its hands by transactions completed before the date of the receivership order. The receivership order would not entitle the Receiver to take possession of any property of the debtor if Mr. Du Vernet was correct.
- [18] Moreover, the fact that the debtor and Mr. Rumack paid the \$1,000,000 to the Receiver is telling. That money came to the debtor in the same transaction and presumably the same cheque as the HST amount of \$143,000. It was property in the possession or control of the debtor or Mr. Rumack on the granting of the receivership order. Therefore, para. 4 of the order required it to be paid to the Receiver and the debtor did so.

- [19] Mr. Du Vernet submits that the existence of the statutory deemed trust in favour of the CRA means that the debtor had no interest in the funds even when they were in its bank account. It is not necessary to get overly analytical about whether a statutory deemed trust is a true trust that divests the trustee of equitable title to the trust *res* or *corpus*. First, the debtor did not treat the funds as belonging to the CRA. It kept the money. Mr. Rumack's affidavit is suspiciously silent on where the money is now. If he believed that he and the debtor had no interest in the funds and were required to pay them to the CRA, he did not act on that view or advice.
- [20] The funds were payable to the debtor and were deposited in the debtor's bank account (or otherwise held for the debtor). HST is complicated. The timing and necessity to make payments to CRA may depend on the taxpayer's reporting period and available input tax credits among other things. Some or all of the \$143,000 may be or become due to CRA or not under the *Excise Tax Act*, RSC 1985, c E-15. In the meantime, the property is owned by the debtor subject to the deemed trust that will be enforceable if net payments are ever required.
- [21] In any event, and despite all the foregoing, even if the debtor's interest in the funds were merely limited to bare legal title as trustee, that is an interest in personal property arising from or out of the debtor's building. The Receiver is entitled to take possession of whatever title the debtor has in its Property.
- [22] No matter how one looks at the \$143,000 in the debtor's hands, it is "Property" as defined in the receivership order. As such, it must be paid to the Receiver.
- [23] The Receiver is entitled to hold all Property. It will pay out Property or proceeds thereof in due course. The payments out will be made in accordance with legal priorities. The determination of those priorities will be made on notice to all interested parties at the appropriate time. It is premature now to determine priorities before the assets that make up the receivership estate have been liquidated or realized upon.
- [24] Mr. Du Vernet submits that the debtor should pay the funds to CRA and then the Receiver will be able to seek a refund if the debtor is entitled to one in due course. Should that happen, then

the CRA will have been paid funds to which it was not entitled. That would prejudice the Receiver and the creditor that is entitled to the funds. Moreover, if repayment to the Receiver leaves the CRA with a shortfall, Mr. Rumack could find himself in CRA's crosshairs in any event.

- [25] Insolvency proceedings are not run to benefit one creditor over another. Mr. Rumack is trying to take steps to limit the possibility that he will have liability to CRA. While that is understandable in his self-interest, it is not consistent with the statutory processes.
- [26] Rather, the court ordered that all Property that is the subject of the receivership order be paid to the Receiver. The Receiver holds the Property of the debtor as a neutral party who provides transparency and has duties to all interested parties. It will pay out property in accordance with legal priorities. If that leaves CRA with a claim for which Mr. Rumack may have liability, that is the intention and due operation of the *Excise Tax Act* and the *BIA*. It is not open to Mr. Rumack to try to frustrate the fair application of the insolvency laws to benefit himself.
- [27] Mr. Rumack, CRA, and all other creditors with an interest in the \$143,000 have the ability to raise issues in the receivership proceeding as to the proper application of the funds. If someone brings forward the issue, it will be heard on an orderly basis with fair notice and transparent disclosures by all.
- [28] Mr. Rumack and the debtor have tried instead to exercise self-help. They have not disclosed the current whereabouts of the \$143,000. Rather, they have ignored the court's order to, "forthwith advise the Receiver of the existence of any Property in such Person's possession or control...and shall deliver all such Property to the Receiver upon the Receiver's request."
- [29] There is a reference in the Receiver's material to the possibility of the court holding Mr. Rumack liable to the Receiver if he has already paid the \$143,000 to the CRA. That issue is not properly before me. The process to bring that issue forward will need consideration if it ever arises. At this stage I say only that I do not see the letter from the Receiver's counsel dated February 6, 2026 as entitling Mr. Rumack or the debtor to pay the funds to the CRA. At best, it reflected the Receiver's confusion as a result of the lack of information flowing from Mr. Rumack and the debtor concerning the status of the funds. At worst, Mr. Rumack is seizing

on a wording slip to try to gain an advantage. The Receiver's letter does not affect the applicability of the terms of the receivership order discussed above or the obligations of the debtor and Mr. Rumack under that order.

- [30] I therefore declare that the sum of \$143,000 paid to the debtor by The Beer Store as HST on its lease termination settlement falls within the definition of "Property" set out in the preamble to the receivership order dated January 13, 2026 in this proceeding.
- [31] The order already requires the debtor and Mr. Rumack to give all Property to the Receiver. I do not need to grant a new order to require that. I note merely that given the declaratory order in the preceding paragraph, Mr. Rumack and the debtor have no ongoing colour of right to hold the funds. This is not a finding that they had any right to hold the funds before the release of this decision. But they plainly have none now. Any delay in payment of the funds to the Receiver therefore risks being seen to be contumelious disregard of the receivership order.
- [32] If the parties are unable to resolve costs, the Receiver may deliver costs submissions on or before April 3, 2026. The debtor and Mr. Rumack may then deliver costs submissions on or before April 10, 2026. All costs submissions shall be accompanied by the party's Costs Outline.
- [33] Costs submissions may be no longer than 750 words. Pages are to have normal margins and be double spaced. Submissions shall be typed in no less than 12-point font (including footnotes if any).


FL Myers J

Date: March 25, 2026

Justice FL Myers Digitally signed by Justice FL
Myers
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