

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

SWINDERPAL SINGH RANDHAWA

Applicant

- and -

**RANA PARTAP SINGH RANDHAWA, PROEX LOGISTICS INC.,
GURU LOGISTICS INC., 1542300 ONTARIO INC. (OPERATED AS ASR
TRANSPORTATION), 2221589 ONTARIO INC., 2435963 ONTARIO INC.,
NOOR RANDHAWA CORP., SUPERSTAR TRANSPORT LTD.,
R.S. INTERNATIONAL CARRIERS INC., SUBEET CARRIERS INC.,
SUPERSTAR LOGISTICS INC., CONTINENTAL TRUCK SERVICES INC., and ASR
TRANSPORTATION INC.**

Respondents

APPLICATION UNDER SECTIONS 161, 207 AND 241 OF THE *BUSINESS CORPORATIONS ACT*, RSO 1990, c B.16 AS AMENDED, SECTIONS 35 AND 39 OF THE *PARTNERSHIPS ACT*, RSO 1990, c P.5 AND SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c C.43

**NOTICE OF MOTION
(Returnable October 1, 2021)**

The Applicant, Swinderpal Singh Randhawa (“**Paul**”), will make a motion to the Honourable Justice Koehnen at 10 a.m. on October 1, 2021 at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference due to the COVID-19 crisis.

THE MOTION IS FOR:

- (a) An Order substantially in the form attached as **Schedule “A”** to this Notice of Motion:
 - (i) that Rana Partap Singh Randhawa (“**Rana**”) personally pay \$150,000, plus interest in the amount of 18%, to Paul within

thirty days of the date of the Order, representing the amount Paul posted with KSV Restructuring Inc. in respect of the Investigation Mandate (defined below) (the “**Posted Funds**”);

- (ii) that Rana personally pay \$86,000 to Paul within thirty days of the date of the Order, representing certain costs incurred by Paul in connection with these proceedings since the appointment of the Receiver (“**Paul’s Costs**”);
- (iii) that, going forward, Rana personally pay all costs incurred and to be incurred by the Receiver and its counsel in connection with the Investigation Mandate that are not covered by the Posted Funds (the “**Additional Receiver Costs**”);
- (iv) abridging the time for service of this Notice of Motion and all related materials, and dispensing with further service thereof; and
- (v) granting Paul costs of this motion; and

(b) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) On May 26, 2021, the Honourable Justice Koehnen granted an Order appointing KSV Restructuring Inc. as Receiver over all of the assets, undertakings and properties of the Respondent corporate entities (collectively, “**RGC**”) acquired for, or used in relation to, a business carried on by RGC, including all proceeds thereof (the “**Initial Order**”), which order was subsequently amended on June 4, 2021 (the “**Amended Order**”);
- (b) Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Amended Order;

- (c) The Amended Order authorizes the Receiver to: (i) operate and manage RGC and sell the trucking, warehousing and logistics business that is owned and operated through RGC (the “**Sale Mandate**”); and (ii) investigate and report on any financial and operational issues identified by Paul and Rana, including those identified in the awards of Larry Banack dated July 3, 2020 and October 26, 2020, and any other matters identified during the course of the Receiver’s investigation, in order to ensure that the Trucking Business was sold in a manner that maximized its value (the “**Investigation Mandate**”);

Recovery of the Posted Funds plus interest

- (d) Paragraph 29 of the Amended Order provided that Paul would post \$100,000 with the Receiver to fund the initial fees and expenses of the Receiver and its counsel in respect of the Investigation Mandate, and that, to the extent those funds were exhausted, Paul would continue to post additional funds in increments of \$25,000 until such time as the Investigation Mandate was completed or the Court ordered otherwise;
- (e) Paragraph 30 of the Amended Order provides that both Paul and Rana reserve their rights to claim at any time for a revised allocation of any past or future fees and disbursements paid to the Receiver or its counsel, or any other amounts ordered to be paid in connection with these proceedings and the proceedings before the Arbitrator, based on the interim and/or final results of the Sale Mandate and the Investigation Mandate.
- (f) To date, Paul has posted \$150,000 in connection with the Investigation Mandate (the “**Posted Funds**”);
- (g) Paul has also posted funds in connection with the Sales Mandate which bear interest at a rate of 18%;
- (h) At all times, Paul’s agreement to fund the Investigation Mandate was under express reservation of rights to seek to recover the Posted Funds

when the issue of allocation of costs had either been agreed to between the parties or ordered by the Court;

- (i) On September 24, 2021, the Receiver issued its Fifth Report (the “**Report**”). The Report indicates that: (i) the Posted Funds have been exhausted; (ii) the Receiver and its counsel have incurred fees totaling approximately \$275,000 through August 31, 2021, and expect to incur additional fees of approximately \$100,000, in connection with the Investigation Mandate; and (iii) the results of the Investigation Mandate substantiate Paul’s concerns and indicate that Rana has engaged in fraudulent conduct through diverting the assets, resources and business of RGC to Motion Transport Ltd. (“**Motion**”). The Report indicates, among other things:

“Rana was actively engaged with the set-up and operation of Motion to the detriment of the efforts to sell the Trucking Business”; (section 4.1.a)

“ASR, at the direction or with the knowledge of Rana, actively solicited business for Motion at the expense of RGC and in particular, ProEx, a business that was operated by Paul” (section 4.2.1.1)

“between September 10, 2018 and September 20, 2019, RGC sold and Motion ultimately acquired, thirteen tractors or trailers”; based on available information, these assets “likely had a higher fair market value than their selling price”; (section 4.2.2)

“ASR permitted the use of ASR resources for Motion’s benefit”; (section 4.2.5)

“rather than attempting to advance the sale of ASR, Rana was working to sell assets from ASR to Motion and transfer business from ASR to Motion”; and (section 4.3.2(e))

the Receiver is of the view that RGC and/or Paul have causes of action against Rana for breach of fiduciary duty, oppression and

transfers at undervalue in connection with Rana's "diversion of assets and corporate opportunity to Motion". (section 6.1)

- (j) In light of the Receiver's findings, Paul seeks an Order that the allocation of the Receiver's and its counsel's fees and expenses associated with the Investigation Mandate be shifted entirely to Rana, including by:

requiring Rana to personally repay Paul, within 30 days, the \$150,000 Paul paid to fund the Investigation Mandate to date, plus interest in the amount of 18%;

requiring Rana to personally fund all future costs incurred by the Receiver in connection with the Investigation Mandate, including all costs that have already been incurred by the Receiver that exceed the amount of the Posted Funds.

Paul's Costs in the Receivership

- (k) Paul has personally incurred over \$86,000 in legal costs in connection with the Receivership proceedings, which includes: (i) negotiating the Order appointing the Receiver; (ii) responding to requests from the Receiver in connection with the Investigation Mandate and the Sale Mandate; (ii) attending at hearings and case conferences related to the status of the Investigation Mandate and the Sale Mandate; (iii) responding to Rana having engaged in transactions to potentially render himself judgement proof;
- (l) As the Receivership was only required in response to Rana's wrongdoing (as described in the Report), Rana ought to indemnify Paul for his costs associated with the Receivership proceedings;

Basis for the Relief Requested

- (m) The Amended Order provides that Paul reserved his rights to claim for a revised allocation of any past or future fees and disbursements paid to the Receiver or its counsel, or any other amounts ordered to be paid in connection with these proceedings, based on the interim and/or final

results of the Sale Mandate and the Investigation Mandate. It further provided that Paul would post funds for the fees and expenses of the Receiver or its counsel in respect of the Investigation Mandate until such time as the mandate is completed “or the Court orders otherwise”;

- (n) With respect to Paul’s Costs, these costs were reasonable and would not have been incurred if not for Rana’s wrongful conduct;
- (o) Paul moves for the relief contemplated herein pursuant to the terms of the Amended Order, the October Minutes of Settlement, Rule 57 of the *Rules of Civil Procedure*, and the Court’s discretion under section 101 and 131 of the *Courts of Justice Act*; and
- (p) Such further and other grounds as counsel for Paul may submit and this Honourable Court may accept.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) Fifth Report of the Receiver dated September 24, 2021; and
- (b) Such further and other evidence as counsel for Paul may submit and this Honourable Court may accept.

September 28, 2021

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Applicant and Respondents

Court File No. CV-18-593636-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable October 1, 2021)**

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Lawyers for the Applicant

Schedule "A"

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE
JUSTICE KOEHNEN

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FRIDAY, THE 1ST DAY
OF OCTOBER 2021

B E T W E E N :

SWINDERPAL SINGH RANDHAWA

Applicant

- and -

**RANA PARTAP SINGH RANDHAWA, PROEX LOGISTICS INC., GURU
LOGISTICS INC., 1542300 ONTARIO INC. (OPERATED AS ASR
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ACT, RSO 1990, c C.43

ORDER

THIS MOTION was heard by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis;

ON READING the Notice of Motion and the Receiver's Report dated September 24, 2021, and on hearing the submissions of counsel for Swinderpal Singh Randhawa ("**Paul**"), counsel for KSV Restructuring Inc. in its capacity as Receiver and not in any other capacity (the "**Receiver**") and counsel for Rana Partap Singh Randhawa ("**Rana**");

IT IS HEREBY ORDERED THAT:

1. The time for service of the Notice of Motion is hereby abridged and validated so that this

Motion is properly returnable today and hereby dispenses with further service thereof.

2 All capitalized terms not defined herein have the meaning ascribed to them in my Order of May 26, 2021 (the “**Initial Order**”).

3 Rana shall personally pay Paul \$150,000, plus interest at a rate of 18%, to reimburse Paul for the costs Paul posted for the Receiver in connection with the Investigation Mandate (the “**Posted Funds**”). Interest shall be calculated from the date that each installment of the Posted Funds was received by the Receiver.

4 Rana shall personally pay Paul \$86,000 in respect of the legal costs incurred by Paul in connection with the Sale Mandate and the Investigation Mandate from the date of the Initial Order to the date of this Order. This Order does not impact either party’s position on costs or other relief relating to the steps taken outside of the Sale Mandate and the Investigation Mandate, including any costs in connection with the Arbitration.

5 Rana shall pay the amounts ordered in paragraphs 3 and 4 above within 30 days of this Order.

6 Rana shall be personally responsible for all outstanding and future costs and expenses incurred by the Receiver in connection with the Investigation Mandate.

7 Rana shall personally pay Paul the costs of this motion in the amount of \$2000, inclusive of disbursements and HST, within 30 days of the date of this Order.

SWINDERPAL SINGH RANDHAWA
Applicant and RANA RANDHAWA ET AL.
Respondents

Court File No. CV-18-593636-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

ORDER

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