



**Sixth Report of
KSV Restructuring Inc.
as Receiver and Manager of 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.**

October 8, 2021

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COURT FILE NO. CV-18-593636-00CL

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

SIXTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

OCTOBER 8, 2021

1.0 Introduction

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as receiver and manager (the "Receiver") of all the assets, undertakings and property (collectively, the "Property") of Proex Logistics Inc., Guru Logistics Inc., 1542300 Ontario Inc. (operated as ASR Transportation) ("ASR"), 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. (collectively, "RGC") acquired for, or used in relation to a business carried on by RGC.
2. Since 2018, Swinderpal Singh Randhawa ("Paul") and Rana Partap Singh Randhawa ("Rana") have been involved in a dispute concerning, *inter alia*, the ownership, operation and sale of RGC.

3. In the context of the dispute between Paul and Rana, on May 19, 2021, the Honourable Justice Koehnen released a decision (the “Decision”) which, *inter alia*, provided for the issuance of a receivership order authorizing KSV, as Receiver, to carry out a sale mandate and an investigation. A copy of the Decision is attached as Appendix “A”.
4. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on May 26, 2021 (the “Receivership Order”), KSV was appointed as Receiver. The Receivership Order was amended on June 4, 2021 (the “Amended Receivership Order”).
5. Paragraph 6 (m) of the Amended Receivership Order, consistent with the model receivership order, empowers and authorizes the Receiver “to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the RGC Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable”.

1.1 The Fifth Report

1. Pursuant to the Investigation Mandate set out in the Amended Receivership Order, the Receiver issued the Fifth Report to Court dated September 24, 2021 (the “Fifth Report”). A copy of the Fifth Report is attached as Appendix “B”, without appendices.
2. The purpose of the Investigation Mandate was for the Receiver to investigate, among other things, an independent arbitrator’s concerns, published in arbitral awards, that Rana was transferring assets away from RGC to another trucking company called Motion Transport Ltd. (“Motion”), which was operated by a friend of Rana’s with assistance from one of Rana’s sons, Subeet Randhawa. The Receiver was empowered under the Amended Receivership Order to investigate and report on any financial and operational issues the parties and the arbitrator had identified, and on any other matters identified throughout the Receiver’s investigation, in order to ensure that the RGC trucking business was being sold in a value-maximizing way, which Rana and Paul had agreed to do in executed minutes of settlement.
3. Over the course of the investigation, the Receiver identified conclusive evidence that Rana was working with Motion and transferring RGC’s assets, resources, personnel, and revenues to Motion in contravention of the settlement agreements between Rana and Paul and with the aim of eroding the value of RGC.
4. The Receiver is continuing the investigation and expects to report to Court with a recommendation on the pursuit or realization on any causes of action owned by RGC.

1.2 The September 16 Order

1. On September 16, 2021, the Honourable Justice Koehnen issued an order (the “September 16 Order”) requiring, *inter alia*, that Rana and/or his wife, Sukhdeep Randhawa (“Sukhdeep”), provide the Receiver within 3 business days the details regarding the use of proceeds of a \$2.4 million mortgage (the “Georgetown Mortgage”) registered on July 5, 2021 against their matrimonial home located at 11132 Fifth Line, Georgetown, Ontario (the “Georgetown Property”). The Receiver is also entitled to examine Rana and/or Sukhdeep to obtain the relevant information.

2. The endorsement in respect of the September 16 Order explains:

13. Given that Rana claims he has no information about the use of the mortgage funds, it is appropriate for the investigator to seek that information from Rana's wife. I note that Sukhdeep is President and director of at least one of the transportation company businesses, Subeet Carriers Inc.

14. The Receiver notes in particular that if Rana is found to owe money to the business, the use of the proceeds of the mortgage could become particularly relevant. Rana submits through counsel that there has been no finding that he owes money to the business. The Receiver, rightly in my view, responds that the issue is not whether Rana owes money to the business but whether there is a basis to investigate that issue. The Receiver notes further that it is obliged to report to the court, it cannot properly report to the court if it is not allowed to investigate what it believes should be investigated.

3. The September 16 Order also restricts Rana from, *inter alia*, encumbering, disposing or transferring property, for which he has a legal or beneficial interest, including the Georgetown Property, in a single transaction with a value over \$10,000 or in multiple transactions within a 30-day period with a value over \$30,000, unless the Receiver is provided with 15 days' notice. The September 16 Order further restricts Rana from entering transactions by which Rana, directly or indirectly, transfers outside of Ontario money or assets in which he has a legal or beneficial interest, unless he provides the Receiver with 15 days' notice.
4. A copy of the September 16 Order is attached as Appendix "C", and Justice Koehnen's endorsement from that Court appearance is attached as Appendix "D". The background regarding the request for the September 16 Order is provided in the Supplement to the Receiver's Fourth Report dated September 13, 2021, which is attached as Appendix "E" (without appendices).
5. The deadline for Sukhdeep and/or Rana to provide the information about the Georgetown Mortgage proceeds pursuant to the September 16 Order was September 21, 2021.

2.0 Information Provided to the Receiver

2.1 The Information Provided by Sukhdeep

1. The Receiver has diligently pursued this matter and tried to avoid the need for a Court appearance. The below summarizes the history of the disclosures made by Sukhdeep as at the date of this Report and the Receiver's efforts to obtain information.
2. On September 20, 2021, Cassels Brock & Blackwell LLP ("Cassels"), counsel to the Receiver, received an email from Napinder Masaun of Xcent Lawyers Professional Corporation advising that he represents Sukhdeep.
3. On September 21, 2021, Mr. Masaun advised Cassels that his client was prepared to share the information required under the September 16 Order, provided the information was not shared with any third party.

4. The September 16 Order does not require that any information be kept confidential. However, to address Sukhdeep's concerns, Cassels responded to Mr. Masaun advising that if the Receiver had questions surrounding the use of the mortgage proceeds, it would first turn to Sukhdeep, prior to requesting assistance from third parties. Cassels also confirmed that the information provided by Sukhdeep may be included in a report to Court.
5. On that basis, on September 23, 2021, Mr. Masaun sent the Receiver a limited package of documents. Based on the information provided, the Receiver was unable to determine the use of the mortgage proceeds.
6. On September 24, 2021, Cassels wrote Mr. Masaun that the information was insufficient and that the Receiver required a bank statement reflecting the use of mortgage proceeds.
7. On September 29, 2021, the Receiver received a redacted bank statement from Mr. Masaun. The document showed additional material transfers that were not included in Mr. Masaun's initial description of the use of the proceeds.
8. At a hearing on October 1, 2021, the Receiver informed the Honourable Justice Koehnen that despite the September 16 Order, the Receiver had still yet to obtain sufficient information about the Georgetown Mortgage from Sukhdeep to enable it to fulfil its investigatory obligations. The Receiver also advised that it required direction on whether certain information could be disclosed to the parties in furtherance of its mandate.
9. In an October 1, 2021 endorsement, Justice Koehnen noted that he wished to hear submissions on this issue from Sukhdeep's counsel prior to providing direction.
10. Immediately following the October 1, 2021 hearing, Cassels advised Mr. Masaun of Justice Koehnen's endorsement, provided a copy of it, and offered to schedule a call on October 4, 2021 with Sukhdeep and Mr. Masaun to obtain the relevant information. Despite having a Court order that empowers the Receiver to examine Sukhdeep under oath, the Receiver viewed this offer as an alternative that could assist the Receiver with its investigation while sparing the time and expenditure of resources of an examination under oath. In further correspondence, Mr. Masaun provided additional information which did not resolve the Receiver's questions.
11. Over the course of October 1, 2021 to October 4, 2021, Cassels and Mr. Masaun exchanged additional emails with requests for information and responsive documents.
12. On October 5, 2021, Cassels delivered a notice of examination to Sukhdeep, with such examination to take place on October 13, 2021. It remains the Receiver's strong preference, however, to avoid the need for an examination.
13. On October 5, 2021, the Receiver and Cassels met with Mr. Masaun and Sukhdeep by Zoom videoconference to review the documents. The Receiver again requested documents relating to transfers between Mr. Masaun's trust account and Sukhdeep. Mr. Masaun provided additional documents to address certain questions posed by the Receiver.

14. On October 6, 2021, Mr. Masaun provided additional documents which did not resolve the Receiver's questions. The Receiver again requested confirmation of deposits of the proceeds of the mortgage into a specific US dollar account identified by Mr. Masaun.
15. On October 7, 2021, Mr. Masaun advised that the transfer of the funds into a U.S. dollar account was arranged through a broker and he could therefore not provide the requested confirmation. The Receiver again requested a copy of the relevant statement. The Receiver delayed serving its materials to allow Mr. Masaun and his client to gather additional documents.
16. In light of the conversion of funds to U.S. dollars and the September 16 Order, the Receiver also asked Mr. Masaun to confirm that none of the proceeds would leave the jurisdiction or be transferred to other family members. Mr. Masaun confirmed that his client had no intention of making any such transfers.
17. On October 8, 2021, immediately before the Receiver was to serve this Report, Mr. Masaun provided additional details in response to the Receiver's questions. The Receiver intends to discuss this matter further with Mr. Masaun to address any outstanding questions based on the new information.
18. Additional details of the information provided to the Receiver to date are included in a Confidential Appendix accompanying this Report.

2.2 Disclosure of Information to Paul and Rana.

1. At the October 1, 2021 hearing, the Receiver advised Justice Koehnen that it believes that both Rana and Paul should be aware of the information that Sukhdeep provides, including because Rana is a guarantor of the Georgetown Mortgage and has previously stated that he is unaware of the use of its proceeds. In light of Sukhdeep's request that the information be kept confidential and not shared with the parties to this litigation, the Receiver requested direction from the Court on this issue.
2. The Receiver may need to seek assistance from third parties, including Paul and/or Rana, to evaluate and assess the use of the mortgage proceeds. Both Paul and Rana have greater familiarity with the historical business practices of RGC as well as the transfer of funds to and from the respective branches of the Randhawa families. The Receiver is unfamiliar with certain of the parties named on the documents provided by Sukhdeep's counsel.
3. In the October 1, 2021 endorsement, Justice Koehnen encouraged the Receiver to work with Sukhdeep's counsel towards a "speedy, practical solution" of the confidentiality issue, and advised that the issue could be argued on October 6, 2021 or soon thereafter if necessary.
4. Immediately following the October 1, 2021 hearing, Cassels discussed the requested disclosure again with Mr. Masaun and asked his client to consider whether a hearing on this matter could be avoided.
5. On October 2, 2021, Mr. Masaun requested that a hearing be set on October 13, 2021 to address the confidentiality issue.

6. On October 3, 2021, Cassels again asked Mr. Masaun to consider whether the need for a motion could be avoided through an agreement with his client. Cassels asked him to identify his client's concerns with disclosure of the information.
7. Mr. Masaun responded to Cassels' October 3, 2021 email by explaining his concerns that his client would be harassed by the "Applicant and his brother" if the information was provided. More specifically, Mr. Masaun stated:

"My client has advised me that the Applicant along with his brother and others, took possession of properties belonging to her in India and the criminal proceedings and cases are also pending against the Applicant and his brother. My client has still not been able to get access to her personal belongings and her property documents from the Applicant in India. The Applicant has already misused her personal belongings and property documents in India. Besides that, the Applicant along with his other brother in India hid from my client the notices from tax authorities, which resulted in huge tax penalties, tax consequences and proceedings. I have asked my client to provide copies of the proceedings and I will forward the same if necessary and required by the court.

8. A copy of Mr. Masaun's email is attached as Appendix "F". Mr. Masaun has provided certain Indian court documents to the Receiver for its review. The Receiver is not involved in the proceedings in India and does not have information as to why Sukhdeep's use of the proceeds of a mortgage in Ontario would be relevant to the Indian proceedings.
9. The Receiver understands that:
 - a) the Unequal Benefits Minutes of Settlement provided that there should be a protocol to allow Rana to enter into his home to retrieve his personal belongings;
 - b) the parties were unable to agree to a protocol and the protocol needed to be established by an arbitrator; and
 - c) Rana's counsel confirmed that Rana had access to the India property to obtain his belongings.

Attached as Appendix "G" is the confirmation from Rana's counsel of the same.

10. The Receiver has also requested that Sukhdeep consider whether a limited set of information, such as redacted documents, could be provided to the parties to avoid any potential prejudice to Sukhdeep.
11. Immediately before the Receiver was to serve this Report, Mr. Masaun confirmed that a disclosure protocol similar to that described in this Report was agreeable. The Receiver intends to work with Mr. Masaun to finalize the proposed order governing the disclosure of information to Rana and Paul in advance of the hearing on this motion.

3.0 Relief Sought

1. The Receiver seeks an order confirming that it is permitted to share information it receives from Sukhdeep with Paul and Rana and their legal counsel to the extent necessary to further the investigation. To minimize Sukhdeep's concerns about such information being misused or made public, the Receiver asks that the order:
 - a) require that Paul and/or Rana agree to treat the information as confidential as a condition to receiving information from the Receiver; and
 - b) require that any party who wishes to file the information with the Court in this proceeding seek a sealing order over such information, although the Court shall retain its discretion over whether to agree to a specific sealing request.
2. The Receiver does not intend to provide full details of the information to Rana or Paul. The Receiver intends to keep confidential the bank accounts and names of specific financial institutions where the funds are located. Instead, the Receiver would share only those details necessary to assist the Receiver in its investigation and to confirm compliance with a Court order, such as the names of parties who are not financial institutions.
3. The Receiver believes that the proposed order appropriately balances the Receiver's need to develop a clear understanding of the information provided to it regarding the proceeds of the Georgetown Mortgage with Sukhdeep's concerns that the information could be used to harm her.
4. The Receiver's proposal is consistent with the terms of the Amended Receivership Order and the case law confirming that the Receiver may seek advice and directions where confidentiality issues arise in the context of an investigation mandate. *Forjay Management Ltd. v 9081478 B.C. Ltd.*, [2018 BCSC 1023](#).
5. The Receiver believes that this request promotes the spirit of the September 16 Order. As an officer of the Court, the Receiver will exercise its discretion responsibly and consistent with the protections it has built into the order requested.
6. The Receiver has prepared a confidential summary of the information Sukhdeep has provided to date to assist the Court with its review of this matter. The Receiver requests that the confidential summary be sealed on the Court file until further order of the Court as the summary contains details that Sukhdeep has requested receive confidential treatment.
7. The Receiver intends to continue to try to finalize an agreement that would be reflected in the draft order in advance of the hearing on this motion.

4.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order:
 - a) confirming that the Receiver is permitted to disclose information it receives from Sukhdeep to Rana and Paul and their legal counsel, provided that such parties agree to keep the information confidential;

- b) limiting the Receiver's liability for making disclosure of the information in accordance with the order;
- c) requiring any party who seeks to file any of the information with the Court in this proceeding to seek a sealing order over such information; and
- d) sealing the Confidential Appendix on the Court file until further order of this Court.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
RGC
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”

CITATION: Randhawa v. Randhawa, 2021 ONSC 3643

COURT FILE NO.: CV-18-593636-00CL

DATE: 20210519

SUPERIOR COURT OF JUSTICE – ONTARIO

(Commercial List)

RE: 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

BEFORE: Koehnen J.

COUNSEL: *Aaron Kreaden, Sam Dukesz* for the Applicant

Brian Kolenda, Chris Kinnear Hunter for the Respondents

Christina Bowman for Motion Transport Ltd.

HEARD: March 12, 2021

ENDORSEMENT

[1] The applicant Swinderpal Singh Randhawa and the respondent Rana Partap Singh Randhawa are brothers. They have been involved in a long, acrimonious dispute about the separation of their interests in various businesses that they once ran together. The division of their businesses has been adjudicated on several occasions by Mr. Larry Banack acting as arbitrator. The applicant was referred to as Paul and the respondent as Rana in the factums of the parties and during oral argument. I will use the same names in these reasons.

- [2] Between the two of them, Paul and Rana raised three issues for determination on this motion:
- I. Did the Arbitrator have jurisdiction to appoint an inspector under the *Ontario Business Corporations Act*¹ (the “OBCA”)?
 - II. Should the receiver appointed to sell the remaining business also be empowered to conduct an investigation that the Arbitrator envisaged that the inspector would conduct?
 - III. Who should be appointed as receiver?
- [3] For the reasons set out below, I find that the Arbitrator had jurisdiction to appoint an inspector, the receiver should have investigatory powers and Paul’s proposed receiver should be appointed.

I. Arbitrator’s Jurisdiction to Appoint an inspector

- [4] Rana submits that the Arbitrator had no jurisdiction to appoint an inspector under the OBCA because the statute reserves the power to do so to this court and because the inspector was to have the power to investigate Motion Transport Ltd., a non-party to the arbitration agreement.
- [5] I will first address the Arbitrator’s power to appoint an inspector under the OBCA and then address the implications of the inspector’s power to look into the affairs of Motion.
- [6] Paul commenced an oppression application in March 2018. The application was settled on October 1, 2018 by entering into Minutes of Settlement. The Minutes of Settlement called for the dissolution or sale of the businesses the brothers ran including the trucking business that is the subject of this motion.
- [7] Rana submits that an arbitrator has no power to appoint an inspector because s. 162 (1) of the OBCA provides that “the court may appoint an inspector” and “court” is defined as the Ontario Superior Court of Justice. Rana relies on several authorities for the proposition that an arbitrator has no power to award a statutory remedy like the appointment of an inspector.
- [8] Some confusion has arisen in this area because issues are often conflated and then reduced to a short form statement that an arbitrator has no power to grant a statutory remedy. Rather than resorting to the short form statement that an arbitrator has no power to grant a statutory remedy as Rana submits, I find it more helpful to untangle some of the issues that the cases address. Some of those separate issues include: (i) Whether an arbitrator in principle has

¹ *Ontario Business Corporations Act*, R.S.O. 1990. c. B. 16

the power to grant a statutory remedy; (ii) Whether there are reasons in a particular case that might make it inappropriate for an arbitrator to grant a statutory remedy; (iii) The scope of the particular arbitration clause at issue; and (iv) A judicial concern that a party may be deprived of a remedy if they are limited to arbitration.

- [9] As a starting point, more recent Ontario cases make it clear that statutory remedies, and in particular OBCA remedies, can be pursued through arbitration.²
- [10] The only principled reason for preventing an arbitrator from awarding a statutory remedy that Rana advanced before me was the possibility that statutory remedies might affect persons who are not signatories to the arbitration agreement.
- [11] In this regard Rana submits that an *OBCA* inspector is a court officer with specific rights and responsibilities set out in the statute. These include powers a private arbitrator could never grant including “requiring any person to produce documents or records to the inspector”, “authorizing an inspector to conduct a hearing, administer oaths and examine any person upon oath, and prescribing rules for the conduct of the hearing” and “requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath”.³
- [12] To the extent that the inspector is being asked to exercise its powers vis-à-vis persons who are not party to the arbitration agreement, I agree that an arbitrator has no jurisdiction to empower an inspector to do so. If, however, the powers of the inspector are limited to investigating the signatories to an arbitration agreement, I was given no conceptual reason for which an arbitrator should be precluded from appointing an inspector. Although the OBCA might refer to the court appointing an inspector, the whole principle underlying arbitration is that parties are free to contract out of the court system and submit their disputes to an arbitrator unless precluded by statute or public policy.
- [13] In the case at hand, the Arbitrator recognized that his jurisdiction was limited to the signatories of the arbitration agreement and provided that if the inspector extended his activities beyond signatories to the arbitration agreement, the parties would have to obtain the assistance of the court. Paragraph 3 of his initial *ex parte* order provides:

I HEREBY DECLARE THAT the scope of the investigation requested to be made by the inspector and the appointment and powers of the inspector are to be determined by return motion before me or the Superior Court of Justice (Commercial List) if the inspection could potentially impact the rights of entities who are not parties to the arbitration clause contained in the Minutes and are therefore outside my jurisdiction as Arbitrator.

² *The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v. Canadian Hearing Society*, 2018 ONSC 5445 at para. 58-59; *Blind Spot Holdings Ltd. v. Decast Holdings Inc.*, 2014 ONSC 1760 at para. 28.

³ *Business Corporations Act*, RSO 1990, c B.16, [s 162](#).

- [14] Seeking the court's assistance in those circumstances is a solution that would naturally impose itself in any event. Enforcement of arbitral award depends initially on the agreement of the parties. An arbitral award has no independent compulsory force. To give it compulsory force, the successful party must in any event go to a court to have the award recognized and enforced.
- [15] The arbitration agreement in question is found in paragraph 22 of the Minutes of Settlement between the parties. It provides:
- Paul and Rana each agree that any dispute arising in respect of the completion or implementation of these Minutes of Settlement, then Paul and Rana agree to appoint an arbitrator ... and any such determinations shall be made on a summary basis and be final and binding on the Parties and shall not be subject to appeal.
- [16] Apart from a minor grammatical error, the arbitration clause is clear. Paul and Rana have agreed to submit to an arbitrator "any dispute arising in respect of the completion or implementation of these Minutes of Settlement." The arbitration is not limited to the interpretation of the agreement. It is broader than that and encompasses "any dispute" that arises "in respect of the completion or implementation" of the Minutes of Settlement. The Minutes of Settlement specifically require Rana to provide Paul with information. The Arbitrator found that Rana had failed to do so.
- [17] The Minutes of Settlement impose specific obligations with respect to provision of information. Paragraph three of the Minutes provide:
- Upon the execution of these Minutes of Settlement, the Parties agree to act in good faith to provide each other with financial, operational and any other information that is required to ensure that the events described in these Minutes of Settlement proceed in an open and transparent manner, including, but not limited to, information to allow the Parties to monitor the Trucking Business and Real Estate Business while the steps contemplated by these Minutes of Settlement are being implemented.
- [18] Paragraphs 4-8 set out a process whereby the parties have time to assess the information they receive to determine whether one of them has directly or indirectly obtained an unequal benefit from the trucking business in the period following January 1, 2011. If one party asserts the other has received an unequal benefit and the parties cannot resolve that dispute, the Minutes call for the appointment of an independent accountant or arbitrator to determine the amount of the unequal benefit. The independent accountant or arbitrator is to work with the parties to determine a fair and efficient process for making that determination. If the parties cannot agree on that process, the independent accountant or arbitrator is empowered to determine the process.

- [19] In my view, the Arbitrator's appointment of the inspector was squarely within the powers he was given under the Minutes of Settlement. He was empowered to establish a process to determine any alleged unequal benefit to one of the parties. Doing so was part and parcel of implementing the Minutes of Settlement. He determined that the most efficient way of doing so was to appoint an inspector. He was squarely within his jurisdiction under the Minutes of Settlement to do so.
- [20] Rana relies on *Armstrong v. Northern Eyes Inc.*,⁴ which he submits stands for the proposition that an arbitrator has no power to award a statutory remedy. *Armstrong*, arose in the context of a shareholders' agreement that provided a specific remedy for a departing shareholder. The arbitration clause was contained in the shareholders agreement. In that context, the case is not so much about a conceptual holding that arbitrators have no power to award statutory remedies but can be more closely read as standing for the proposition that in the circumstances of that case, where the parties had contemplated a specific remedy for a departing shareholder, the arbitration agreement did not give the arbitrator the power to go beyond the contractually agreed to remedy. That is far different from saying that an arbitrator has no power to award a remedy under the OBCA, regardless of the circumstances.
- [21] The following extracts from the Divisional Court reasons make this clear:
- [34] It might also be noted that the remedies open to the arbitrator under Article 14 are comparatively close to the remedies available under OBCA s. 248(3)(f). The remedies are operationally identical in the sense that they require the majority to purchase the applicant's shares. What may differ, depending on the view that might be taken by the court in an oppression hearing, is the scope of the methodology used to achieve the valuation. If not completely identical, the remedies are comparatively close.
- [35] Where the essential character of the dispute is subject to arbitration, there is no real deprivation of ultimate remedy so long as the applicant is able to pursue an appropriate remedy through the specialized vehicle of arbitration.
- [36] Such is the case here. The applicant agreed in Article 14 that on leaving the company, he would tender his shares to be redeemed by the company at fair market value to be determined by the company's accountants. The applicant's problem is not that he lacks an appropriate remedy. His problem is that the method of valuation within the remedy to which he agreed may not be as

⁴ *Armstrong v. Northern Eyes Inc.*, 2000 CanLII 29047 (ON SCDC)

potentially advantageous to him as that which might be imposed by a court under the OBCA. There is nothing unequal or unfair, within the meaning of s. 6(3) of the Arbitration Act, in holding the applicant to his agreement. Absent the extraordinary circumstances contemplated by cases such as *Deluce*, the *Weber* principle does not oust the arbitrator simply because the applicant now prefers the potential of a valuation method that might be more advantageous to him than the method to which he agreed.

[22] Put differently, when the arbitrator in *Armstrong* said he had no authority to grant a statutory remedy, he was really saying that the arbitration agreement prescribed the remedies that were available to the parties and, since arbitration is a matter of contract, the arbitrator had no power to go beyond the contractual remedy and provide a statutory remedy.

[23] Next, Rana relies on the decision of Justice Lax in *Pandora Select Partners, LP v. Strategy Real Estate Investments Ltd.*⁵ Like *Armstrong*, *Pandora* is not so much about a general proposition to the effect that an arbitrator has no power to award remedies under the OBCA as it is about: (i) concerns that the applicant would be denied access to an OBCA remedy entirely; and (ii) the interpretation of the particular arbitration clause in that case.

[24] In *Pandora*, investors subscribed for shares in shares an OBCA company. The investors later complained that the OBCA company had not produced audited financial statements as they are required to do by the statute. The subscription agreement provided that it was to be construed with and governed by the laws of the State of New York and that:

Any controversy, claim or dispute arising out of or relating to this Subscription Agreement between the parties hereto, their assignees, their affiliates, their attorneys, or agents, shall be litigated solely in state or Federal Court in New York City....

[25] On the plain wording of the OBCA, a state or federal court in New York is not a “court” for the purposes of the OBCA and may not be entitled to grant OBCA remedies.

[26] At the same time, the subscription agreement contained a conflicting clause which called for any dispute to be resolved “exclusively by arbitration to be conducted in New York, New York in accordance with the rules of the American Arbitration Association.”

⁵ *Pandora Select Partners, LP v. Strategy Real Estate Investments Ltd.*, 2007 CanLII 8026 (ON SC)

[27] In paragraph 15 of her reasons, Justice Lax drew a distinction between the arbitration clause which governed the subscription agreement and the core obligations of the OBCA corporation. On her interpretation of the arbitration agreement, Justice Lax found that the applicants had not contracted out of the right to apply to an Ontario court for relief about the manner in which the underlying corporation was to be governed. In doing so she explained:

[15] The right of shareholders to financial reporting is solely a function of the legal relationship between a corporation and its shareholders under the OBCA. By contrast, the arbitration clause is contained in the Subscription Agreements, the purpose of which was to consummate a commercial transaction. The Subscription Agreements do not purport to apply to the core obligations which SREI has to the Applicants under the OBCA. Rather, they are primarily comprised of terms peculiar to the transaction, namely, representations and warranties between the parties that were intended “to induce” one another “to enter into” the Subscription Agreements, together with various covenants by SREI, including ones relating to compliance with U.S. securities legislation, compliance with laws, the keeping of records and books of account and the status of dividends. This would suggest that the arbitration clause is properly interpreted as applying to issues arising in the context of the transaction contemplated by the Subscription Agreements.

[28] Justice Lax continued in paragraph 16 of her reasons to express a concern that

If the arbitration clause is interpreted as prohibiting the Applicants from seeking judicial enforcement of SREI’s core obligations under the OBCA, this would mean that, merely by agreeing to include the arbitration clause in the Subscription Agreements, the Applicants have absolved SREI of its core financial disclosure obligations. In particular, if the arbitration clause prohibits the Applicants from seeking judicial enforcement of SREI’s core obligations, it is likely the case that there is no forum to which the Applicants can turn to enforce those core obligations, thereby rendering the obligation nugatory. In turn, the arbitration clause would effectively circumvent the statutory requirement of explicit written consent provided by section 148(b) to exempt SREI from its obligations under Part XII of the OBCA. The deprivation of a statutory right is a matter to be considered in determining the scope of an arbitration clause.

- [29] *Pandora* does not express a view that an arbitrator has no power to award OBCA remedies. Rather, it expresses a concern about what might happen in a foreign forum if the arbitral clause were interpreted that way and the concern that a foreign court may not have the power to award OBCA remedies.
- [30] Finally, Rana relies on the decision of the Court of Appeal for British Columbia in *ABOP LLC v. Qtrade Canada Inc.*⁶ The reasons of the motions court judge and of the Court of Appeal suggested that oppression relief was not available in the arbitration in that case. It is not entirely clear though whether this finding was grounded in a legal rule to the effect that statutory remedies are not available in arbitrations or whether it was grounded in the interpretation of the arbitration clause that applied in that case. The arbitration agreement at issue provided that a portion of the dispute was subject to arbitration but another portion of the dispute was not. The Court of Appeal disposed of the issue by holding that it would be for the arbitrator to make all necessary findings of fact. If those findings supported an oppression claim, then the applicant could continue the oppression claim in court based on the arbitrator's findings of fact.
- [31] This is similar to what happened here. The Arbitrator made a finding that the appointment of an inspector was appropriate. He specifically found, however, that Paul would have to go to the courts if the inspector's powers were intended to affect persons that had not signed the arbitration agreement.
- [32] In my view, the Arbitrator acted entirely appropriately and within his jurisdiction in authorizing the investigation and in directing the parties to the court if they wanted to expand the powers of the inspector to affect non-signatories to the arbitration agreement.

II. Should the Receiver Conduct an Investigation?

- [33] The landscape has changed somewhat since this matter was last before the Arbitrator. Both parties now agree that a receiver should be appointed to sell the trucking business. The issue separating them is whether the receiver should have investigatory powers.
- [34] The Arbitrator already determined that an investigation is needed in connection with the sale of the trucking business. Rana submits that I am not entitled to rely on any of the findings the Arbitrator made and must revisit the question of an investigatory receivership from scratch.
- [35] I disagree. Rana's position might have more force if the question before me were whether a receiver should be appointed. That, however, is not in issue. Rana agrees that a receiver should be appointed. The only point of difference is whether there should be an

⁶ *ABOP LLC v. Qtrade Canada Inc.*, 2007 BCCA 290.

investigation. It matters little whether the investigation is conducted by an inspector or by a receiver. The point is whether an investigation should occur. That issue has already been fully canvassed by the Arbitrator in a process that took many months.

- [36] As noted above, even if I were to adopt Rana’s view to the effect that the Arbitrator had no jurisdiction to appoint an inspector, the decision of the British Columbia Court of Appeal in *ABOP* holds that the appropriate course of action is for the Arbitrator to make relevant findings of fact and for the court to consider whether the statutory remedy is appropriate on those facts.
- [37] The Arbitrator made ample findings of fact to justify the need for an investigation. The arbitrator has been involved with the parties since 2018. He has issued 12 endorsements or awards relating to the disputes between them. He has in his words “become very familiar with” their business dealings.
- [38] The Arbitrator rendered two decisions in respect of the appointment of an inspector. The first was an *ex parte* order dated July 3, 2020. The matter then returned to the Arbitrator for submissions by Rana. That led to a further decision dated October 26, 2020 which runs to 359 paragraphs. It was based on extensive evidence including eight affidavits and *viva voce* cross-examinations before the Arbitrator, albeit conducted virtually.
- [39] The Arbitrator provided detailed reasons for appointing an inspector which fall into two general categories.
- [40] First, Rana “perpetuated a lack of transparency” in the operation of the trucking business. This included findings of a “lack of good faith in providing financial and operational information required to secure the sale of the Trucking Business.” As noted earlier, the Minutes of Settlement required Rana to give Paul information to enable him to monitor the trucking business before the sale. The Arbitrator found that “Rana has failed to comply with his disclosure obligations” under the Minutes of Settlement. Among other things, the Arbitrator noted that it was Rana’s obligation to prepare financial statements and that Rana did not do so.
- [41] Second, the Arbitrator made several findings that Rana’s own proposed receiver acknowledged would constitute red flags for potential fraud.
- [42] Far from casting any doubt on the *ex parte* order, Rana’s participation in the with notice hearing only strengthened the Arbitrator’s view about the need for an inspector.
- [43] The Arbitrator made a series of findings surrounding what appeared to be the transfer of at least 12 trucks from the brothers’ business to Motion Transport Ltd. It appears that Motion acquired the trucks for the same price at which Rana had sold them, sometimes to third party, a day or two earlier. Motion was run by a good friend of Rana’s, Mr. Dhinda. Mr. Dhinda says he was retired. Rana’s son worked for Motion. Mr. Dhinda could not explain where Motion got the money to purchase the trucks that formerly belonged to the brothers’ business. Moreover, Mr. Dhinda stated that he had no knowledge of Motion’s accounting or operational issues because Rana’s son “looked after that.”

- [44] The need for an investigation is well-founded. Whether it is conducted by an inspector or a receiver does not matter.
- [45] In the hearing before me, Rana resisted the investigatory aspect of the receivership by: taking issue with some of the facts that the Arbitrator found; pointing to the cost of the investigation and by pointing to the delay an investigation will have on the sale. None of these provides a basis for refusing the investigation.
- [46] Rana is entitled to dispute the facts on which the Arbitrator based his order for an investigation. The Arbitrator did not make definitive findings of fact in this regard nor is he entitled to. Indeed, the whole point of appointing an inspector is because facts need to be investigated. The test for the Arbitrator was whether there were sufficient grounds to have concerns about wrongdoing to warrant an investigation. There were more than ample grounds in this regard. Rana also suggested before me that his son was no longer working at Motion. That may or may not be the case but it has nothing to do with the allegations of past misconduct levelled against Rana and his relationship with Motion.
- [47] With respect to the costs of the investigation, Paul has agreed to fund the investigation initially. If it finds wrongdoing, Paul will be compensated for the cost of the investigation out of the proceeds of sale. If it finds no wrongdoing, then the cost will remain for Paul's account.
- [48] With respect to concerns about the delay that the investigation would have on the sale, Rana's own proposed receiver stated that: the investigation could be done expeditiously;⁷ there are synergies to be gained by investigating while advancing the sales process;⁸ and if there is a concern that Rana has not acted in good faith in providing information required to sell the business, it would be prudent "investigate those issues as part of any sale."⁹ The Arbitrator expressly found that concerns about Rana's lack of good faith were valid.¹⁰
- [49] There are also ample grounds for which the Receiver should be entitled to examine the affairs of Motion. I note here that the Receiver would not be making any findings of liability but would merely be conducting a factual investigation. The Receiver does not need to disrupt Motion's business to do so. It is simply a matter of having access to Motion's records which can be easily facilitated by allowing the Receiver to image Motion's computers or other electronic storage devices.
- [50] In *Akagi v. Synergy Group (2000) Inc.*,¹¹ the Ontario Court of Appeal confirmed that the mandate of a receiver appointed under section 101 of the *Courts of Justice Act*¹² can in appropriate cases include an investigation. As Blair J.A. stated:

⁷ Nackan Cross at q. 166.

⁸ Nackan Cross at q. 172.

⁹ Nackan Cross at q. 151.

¹⁰ October Award at para. 293.

¹¹ *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368

¹² *Courts of Justice Act*, RSO 1990, c C.43

Indeed, whether it is labelled an “investigative” receivership or not, there is much to be said in favour of such a tool, in my view – when it is utilized in appropriate circumstances and with appropriate restraints. Clearly, there are situations where the appointment of a receiver to investigate the affairs of a debtor or to review certain transactions – including even, in proper circumstances, the affairs of and transactions concerning related non-parties – will be a proper exercise of the court’s just and convenient authority under section 101 of the Courts of Justice Act.¹³

- [51] In paragraph 98 of *Akagi*, Blair J.A. set out four themes or factors that emerged from the case law surrounding investigative receiverships.
- [52] The first is whether the appointment is necessary to alleviate a risk to the plaintiff’s right to recovery. I am satisfied that this factor has been met. Paul is entitled to 50% of the proceeds of sale. Rana is not entitled to any unequal benefit. There are a series of suspicious circumstances the Arbitrator identified that would, if substantiated, lead to an unequal benefit to Rana.
- [53] The second factor is to determine whether the objective is to gather information and “ascertain the true state of affairs” of the debtor, or a related network of entities. This is the very purpose of an investigatory receiver. The appointment order can define the Receiver’s powers to ensure that they are limited to this purpose. There is also a need to gather information because, as the Arbitrator noted, there is an informational imbalance between the parties. Correcting an informational imbalance is one key reason for appointing an investigative receiver.¹⁴
- [54] The third factor is that the Receiver does not control the debtor’s assets or operate its business, leaving the debtor to carry on its business in a manner consistent with the preservation of its business and property. This factor is of lesser importance here because the Receiver will also be empowered to sell the trucking business. As it relates to Motion, however, it is clear that the Receiver will not be operating Motion’s business but will merely be investigating certain transactions between Motion and the brothers’ trucking business or entities related to them.
- [55] Finally, the receivership should be carefully tailored to what is required to assist in the recovery while protecting the defendant’s interests, and go no further than necessary to achieve these ends. This too can be easily achieved by tailoring the order appropriately.
- [56] There is ample authority to permit an inspector to extend its investigation to non-parties. In connection with the appointment of an inspector, s. 162(1) of the OBCA allows the

¹³ *Akagi* at para. 66

¹⁴ *Akagi* at para 90.

court to make any order it thinks fit including, without limiting the generality of the foregoing:

(d) an order authorizing an inspector to enter any premises in which the court is satisfied there might be relevant information, and to examine anything and make copies of any document or record found on the premises;

(e) an order requiring any person to produce documents or records to the inspector;

(f) an order authorizing an inspector to conduct a hearing, administer oaths and examine any person upon oath, and prescribing rules for the conduct of the hearing;

(g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath;

(h) an order giving directions to an inspector or any interested person on any matter arising in the investigation;

[57] The wording of these provisions makes it clear that an inspector's powers are not restricted merely to the parties to the litigation but extend to all who have relevant information.

[58] Similarly, investigatory receivers have been given powers to include non-parties within the ambit of their investigation,¹⁵ especially where the non-parties were involved in the movement of funds or assets at issue.¹⁶

[59] On the basis of the foregoing, I am satisfied that the receiver should have the investigatory powers Paul seeks.

[60] I am equally satisfied that the investigation should extend to Motion. Motion had the ability to make submissions before the Arbitrator and made submissions before me on this motion. Its submissions on the motion before me consisted of contesting some of the factual findings of the Arbitrator and of general allegations of inconvenience. As noted, however, the fact remained to be determined and all that would be required of Motion is to provide an image of its records to the investigatory receiver. If Motion does not cooperate in that regard, the steps required may be more intrusive. Whether more intrusive steps are required will initially be up to Motion to determine.

¹⁵ *Akagi* at para 90.

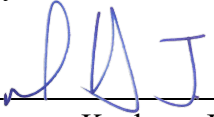
¹⁶ *DeGroot v. DC Entertainment Corp.*, 2013 ONSC 7101 at paras. 58 and 60.

III. Who should be appointed as receiver?

- [61] Paul proposes that the court appoint KSV as Receiver. Rana proposes that A. Farber and Partners Inc. be appointed. I am concerned that Farber may be conflicted based on a prior retainer by Rana. Rana had retained Farber to assist him in the litigation between the parties. Farber's representative acknowledged that this created a potential conflict.
- [62] Given past acrimony I think it is preferable to appoint KSV.

Disposition and Costs

- [63] For the reasons set out above, Paul's motion is granted and KSV will be appointed Receiver over the trucking businesses of the parties.
- [64] A draft order was included with the Caselines materials. If the respondents have any objections to that order they should notify the applicants and me by email within 48 hours. I will then set up a case conference to finalize the form of order.
- [65] Any party seeking costs of the motion may make written submissions by June 1, 2021. Responding submissions should follow by June 8, 2021 with reply due by June 14.



Koehnen J.

Date: May 19, 2021

Appendix “B”



**Fifth Report of
KSV Restructuring Inc.
as Receiver and Manager of 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.**

September 24, 2021

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COURT FILE NO. CV-18-593636-00CL

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

FIFTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

SEPTEMBER 24, 2021

1.0 Introduction

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as receiver and manager (the "Receiver") of all the assets, undertakings and property (collectively, the "Property") of Proex Logistics Inc. ("ProEx"), Guru Logistics Inc., 1542300 Ontario Inc. (operated as ASR Transportation) ("ASR"), 2221589 Ontario Inc. ("222"), 2435963 Ontario Inc., Noor Randhawa Corp., Superstar Transport Ltd., R.S. International Carriers Inc., Subeet Carriers Inc. ("Subeet Carriers"), Superstar Logistics Inc., Continental Truck Services Inc., and ASR Transportation Inc. (collectively, "RGC") acquired for, or used in relation to a business carried on by RGC.
2. Since 2018, Swinderpal Singh Randhawa ("Paul") and Rana Partap Singh Randhawa ("Rana") have been involved in a dispute concerning, *inter alia*, the ownership, operation and sale of RGC.

3. In the context of the dispute between Paul and Rana, on May 19, 2021, the Honourable Justice Koehnen released a decision (the “Decision”) which, *inter alia*, provided for the issuance of a receivership order authorizing and empowering KSV, as Receiver, to carry out a sale mandate and an investigation. A copy of the Decision is attached as Appendix “A”.
4. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on May 26, 2021 (the “Receivership Order”), KSV was appointed as Receiver. The Receivership Order was amended on June 4, 2021 (the “Amended Receivership Order”). A copy of the Amended Receivership Order is attached as Appendix “B”.
5. Paragraph three of the Amended Receivership Order authorizes the Receiver to:
 - a) operate and manage RGC and sell the trucking, warehousing and logistics business (the “Sale Mandate”); and
 - b) conduct an investigation of issues identified by the parties, including those identified by an arbitrator previously appointed in the dispute and by the Receiver, to ensure that the trucking business is being sold in a manner that maximizes value (the “Investigation Mandate”).

1.1 Purpose

1. The purposes of this report (the “Report”) are to:
 - a) provide an update on the Investigation Mandate;
 - b) recommend that the Receiver further investigate potential sources of recovery for RGC, including (i) retaining a valuation expert to provide an independent valuation of RGC as of October 2018 and (ii) soliciting interest from potential claims purchasers to determine if there is a market for litigation claims owned by RGC;
 - c) request that the Court order payment of the costs of the Investigation Mandate, including legal fees in respect thereof, from the proceeds of the Sale Mandate and confirm that the Receiver’s Charge is applicable to such fees; and
 - d) seek advice and directions from this Court with respect to further investigation and/or recovery actions to be undertaken.

1.2 Currency

1. All amounts in this report are expressed in Canadian Dollars, unless otherwise noted.

1.3 Restrictions

1. In preparing this Report, the Receiver has reviewed the following information:
 - a) materials previously filed with the Court in connection with the application to appoint an inspector over RGC, the application to appoint the Receiver, and within this receivership proceeding (collectively, the “Court Materials”);

- b) unaudited financial information of RGC and Motion Transport Ltd. (“Motion”), a trucking company identified as a potentially related party;
 - c) accounting records and bank statements for RGC and Motion;
 - d) interviews of certain former employees of ASR, including Paul, Rana and their legal counsel, and Dave Rawn, the former General Manager of ASR;
 - e) transcripts of the examinations conducted by the Receiver of Baldev Dhindsa (“Mr. Dhindsa”), the President of Motion, conducted on July 21, 2021 and Rana, conducted on August 19, 2021 (jointly, the “Examinations”); and
 - f) certain email and electronic records of RGC and Motion (together with (a) through (f), above, the “Information”).
2. The Receiver has not audited, or otherwise attempted to verify, the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the Information or financial information should perform its own diligence.
 3. The Receiver has not conducted a formal valuation of RGC or any of the assets referred to in this Report. As stated in section 5.0 below, the Receiver has provided preliminary observations as to the value of RGC that are qualified in their entirety by the need to conduct a formal valuation when funds are available to do so. The Receiver does not assume any responsibility or liability for losses occasioned to any party because of their reliance on the Receiver’s preliminary observations with respect to value stated herein.
 4. The Receiver’s understanding of factual matters referred to in this Report is exclusively based on the Information.
 5. In accordance with paragraph 5 of the Amended Receivership Order, Paul and Rana will both receive copies of this Report when it is served. Neither Rana nor Paul had the opportunity to review the Report in advance of it being served.

2.0 Executive Summary¹

1. The Receiver’s mandate arose out of a long-standing and contentious dispute between brothers, Paul and Rana Randhawa.
2. Following the commencement of an oppression application in 2018, the brothers entered into the October Minutes in October 2018 which provide for the division of their business assets and a reconciliation of personal benefits received by each brother from RGC. The last step in the business separation is the sale of the Trucking Business and the distribution of the proceeds thereof.

¹ Terms not defined in this section have the meanings set out in the body of this Report.

3. For reasons that are in dispute, the Trucking Business was not sold in a timely manner and in 2020, Paul retained a private investigator. The private investigator found, among other things, that certain RGC vehicles had been transferred to Motion, that Rana and his son appeared to be working for Motion, and that certain ASR assets and staff were being used to operate Motion.
4. Paul brought a motion before the Arbitrator appointed pursuant to the October Minutes for the appointment of an inspector under the OBCA. After a process that involved two motions before the Arbitrator and two contested court applications, this Court appointed KSV as Receiver to sell the Trucking Business and to investigate the issues identified by the Arbitrator.
5. Over the course of the investigation, the Receiver identified substantial evidence confirming that Rana was working with Motion and transferring RGC's assets, resources, personnel, and revenues to Motion in contravention of the Settlement Agreements and with the aim of eroding the value of RGC.
6. The Receiver is currently selling the Trucking Business through a liquidation of the assets in accordance with an auction services agreement, which received Court approval on September 16, 2021. Upon the Receiver's appointment, it was quickly determined in consultation with Rana and Paul that the business could not be sold as a going concern, as it required substantial funding, which, the brothers acknowledged, was not available. Accordingly, absent further successful litigation or an alternative resolution of the claims held by RGC, the Receiver will not be able to recover the value of the assets or opportunities lost since the execution of the October Minutes in 2018.
7. Based on the general valuation principles for companies of this size and operating in this industry, and having examined the available unaudited financial statements, the Receiver has conducted preliminary valuation analysis to determine the value of RGC as of the date of the October Minutes. The Receiver, has not, however, retained an independent valuation expert to determine the value of the Trucking Business in October 2018.
8. Assuming that creditor claims are paid in full, the only remaining stakeholders will be the shareholders of RGC. As described in detail below, the Receiver believes that there are potential claims against Rana, Motion and other related parties (the "RGC Causes of Action").
9. The Receiver is proposing to obtain additional information to determine the value of the RGC Causes of Action and to determine whether a resolution of such claims is possible. Following (i) conclusion of the auction; (ii) review of the claims filed by the claims bar date against each RGC entity; and (iii) receipt of the additional valuation information, the Receiver would return to Court with a recommendation on pursuit or realization of the RGC Causes of Action.

3.0 RGC Receivership

3.1 Background

1. On March 9, 2018, Paul commenced an oppression application (the “Application”) with the Court to address, *inter alia*, Rana’s denial that Paul was an equal owner of RGC’s trucking business (the “Trucking Business”) and certain properties owned by RGC (the “Real Estate Business”).
2. On October 1, 2018, Rana and Paul entered into Minutes of Settlement (the “October Minutes”). A copy of the October Minutes is attached as Appendix “C”. The October Minutes provide:
 - a) that Rana and Paul each own 50% of the Trucking Business and the Real Estate Business;
 - b) a process to allow Rana and Paul to monitor the Trucking Business before a sale;
 - c) a process for selling the Trucking Business and Real Estate Business and splitting the proceeds equally; and
 - d) a process for dealing with any unequal benefits that Rana or Paul received from RGC (the “Unequal Benefits”).
3. On September 13, 2019, Rana and Paul entered into an additional Minutes of Settlement to deal with the Unequal Benefits (the “UB Minutes of Settlement” and together with the October Minutes, the “Settlement Agreements”). A copy of the UB Minutes of Settlement is attached as Appendix “D”.
4. Prior to the October Minutes, the Court issued an order on consent dated April 27, 2018 (the “Injunction Order”) pursuant to which, among other things, in exchange for Paul agreeing not to come to RGC’s office in person, Rana agreed not to make any changes to, among other things, the Trucking Business while the litigation was outstanding and not to “sell, transfer or otherwise dispose of any assets owned by RGC...outside of the ordinary course”. This agreement is reflected in the Injunction Order which is attached as Appendix “E”.

3.2 Inspector Motion

1. In June 2020, Paul delivered an *ex parte* motion record (the “Inspector Motion”) to the arbitrator appointed pursuant to the October Minutes (the “Arbitrator”) seeking the appointment of an inspector under the *Ontario Business Corporations Act* (the “OBCA”) to, *inter alia*, investigate certain issues identified surrounding the Trucking Business and to provide an update on the status of the sale process for the Trucking Business. The Inspector Motion included a report (the “PI Report”) prepared by Integra Investigations Services Ltd., a private investigator engaged by Paul due to concerns about the significant deterioration in the financial condition of RGC. The PI Report identified the following:
 - a) between January 1, 2018 and June 26, 2020, ASR and Subeet Carriers directly or indirectly transferred a total of 13 vehicles to Motion, despite the Injunction Order;

- b) Rana and/or his son, Subeet Randhawa, were involved in the operations of Motion, which appeared to be a competitor of RGC; and
 - c) Motion was using ASR resources including staff, trucks, and industry contacts to service Motion customers which were previously customers of ASR.
2. On July 3, 2020, the Arbitrator granted an award, which Paul subsequently sought to have recognized by this Court. On July 17, 2020, the Honourable Justice Dietrich determined that the application to recognize the award was premature and adjourned Paul's motion to permit Rana to seek relief before the Arbitrator.
3. Following a motion on notice, the Arbitrator granted a second award on October 26, 2020, setting out further reasons for the appointment of an inspector (the "October Award"). A copy of the October Award is attached as Appendix "F". In the October Award, the Arbitrator found, among other things:
- a) Rana "perpetuated a lack of transparency into the operations of ASR, and a lack of good faith in providing financial, operational and other relevant information required to secure the sale of the Trucking Business";²
 - b) it was "highly suspicious" that ASR was paying Rana's son when he was working for Motion;³
 - c) "Rana failed to comply with his disclosure obligations" under the Minutes of Settlement. Among other things, the Arbitrator noted that it was Rana's obligation to prepare financial statements and that Rana did not do so;
 - d) it was "highly suspect that 13 pieces of ASR equipment coincidentally ended up with Motion"⁴; and
 - e) Rana provided no explanation for "why ASR's decline in revenue not only coincided with the incorporation of Motion, but greatly exceed the decline in revenue experienced by ProEx [the smaller entity in the Trucking Business that is run by Paul]"⁵.

3.3 Receivership

1. The Receiver has been appointed over all of the RGC business but understands that all of the real estate assets of the Real Estate Business were sold prior to the Receiver's appointment.⁶ Consistent with this Information and the description of the Receiver's Investigation Mandate in the Amended Receivership Order, the Receiver's investigation has focused solely on the Trucking Business.

² October Award, Appendix F to Report, at paragraph 293.

³ October Award, Appendix F to Report, at paragraph 89.

⁴ October Award, Appendix F to Report, at paragraph 339.

⁵ October Award, Appendix F to Report, at paragraph 320.

⁶ UB Minutes, Appendix D to Report, at Recital 4.

2. Based on the Arbitrator's findings and the agreement between the parties that a Receiver was necessary to complete the Sale Mandate, the Honourable Justice Koehnen appointed KSV as Receiver. The Decision provides that notwithstanding the Arbitrator's findings, the appointment of a court officer is appropriate because the Arbitrator's findings were not definitive. Instead, the Court determined only that there "were sufficient grounds to have concerns about wrongdoing to warrant investigation."⁷
3. Rana has denied all the allegations and any involvement with Motion or any ownership interest in Motion, as set out in Rana's various affidavits filed and examinations conducted as part of these proceedings. In the investigation, Rana maintained this position both informally and under oath.
4. Consistent with the Decision and pursuant to the Amended Receivership Order, Paul has agreed to fund the Investigation Mandate "until the issue of the allocation of costs has been resolved or further order of the court."⁸ The Receiver understands that this provision of the Amended Receivership Order was negotiated to resolve Rana's objections with respect to the cost of the Investigation Mandate. To-date, Paul has funded the Receiver \$150,000 in connection with the Investigation Mandate. The funding has been used to fund the Receiver's professional fees and its disbursements and to engage personnel, including IT experts, to assist with the investigation.
5. Although the Receiver has been judicious in the use of funds, the funds advanced for the investigation have been fully consumed and the Receiver will require further funding if the investigation continues. The Receiver and its counsel have incurred fees totaling approximately \$275,000 through August 31, 2021 related to the Investigation Mandate.

3.3.1 Realizations and Claims

1. On August 25, 2021, the Receiver entered into an Auction Services Agreement (the "ASA Agreement") with McDougall Auctioneers Ltd. ("McDougall"), which was approved by the Court on September 16, 2021. The ASA Agreement provides that McDougall will provide the Receiver with a guaranteed minimum payment for all RGC's trucks and trailers.
2. The Receiver is also attempting to collect certain accounts receivable owing from RGC's customers. In addition, the most recent draft financial statements of ASR, for the year ending September 30, 2018 reflect that Rana has shareholder loan obligations owing to ASR of approximately \$450,000. The Receiver has requested that Rana advise on the status of these loans and their repayment, but has not received a response to date.

⁷ Decision, Appendix A to Report, at paragraph 46.

⁸ Amended Receivership Order, Appendix B to Report, at paragraph 30.

3. On September 16, 2021, the Court approved a claims process for RGC. The claims bar date is October 31, 2021. As the claims process has only recently commenced, the Receiver does not have a full understanding of the outstanding claims against RGC, including claims by Canada Revenue Agency (“CRA”) (as discussed in further detail below). Based on the books and records of RGC and absent new information, there should be sufficient funds to repay all claims and make a distribution to the shareholders of RGC.

3.4 Status of the Investigation

1. Since its appointment, the Receiver has taken steps to complete the Investigation Mandate as expeditiously and cost-effectively as possible. Among other things, in connection with the Investigation Mandate, the Receiver has:
 - a) reviewed the Court Materials;
 - b) imaged RGC’s server and Motion’s email database;
 - c) negotiated a protocol (the “Protocol”) to permit Rana to review over 900,000 records which may constitute privileged data stored on RGC’s servers;
 - d) reviewed certain of the Remaining Data (as defined in the Protocol) which consists of over 1 million records;
 - e) reviewed certain records of Motion and RGC, including banking, customer, Ministry of Transportation and other records, including ProEx documents provided by Paul and copies of materials exchanged by Paul and Rana pursuant to the October Minutes;
 - f) prepared for and conducted the Examinations and otherwise taken evidence;
 - g) interviewed certain former ASR employees and industry contacts, including Dave Rawn, formerly the General Manager of ASR, and Doug Watt, the founder of Next Truck Sales (“Next Truck”), a truck reseller previously used by ASR; and
 - h) spoken on several occasions with legal counsel to Paul and Rana.
2. In light of the limited budget and the circumstances described below, the Receiver has not completed certain tasks that may benefit the investigation. For example, the Receiver has not:
 - a) obtained a formal valuation of the RGC business as of the date of the October Minutes;
 - b) compared the records of the ASR Petro Pass payments against the ASR truck routes to determine if ASR Petro Passes were used to pay for fuel not related to ASR’s business;
 - c) reviewed all information stored on the ASR devices or determined whether any information was deleted;

- d) reviewed any documents stored on tablets or computers used by Rana. Rana has advised the Receiver that he does not have a computer or a tablet from which he conducts his business.⁹ While Paul provided the Receiver with a record that suggests an Apple device was purchased on a business credit card, the device has not been located;¹⁰
 - e) completed a forensic review of the bank records of RGC or Motion; or
 - f) conducted examinations under oath or interviews of potential additional witnesses, including Maryam Tehrani, a former employee of ASR, and Rana's sons, Subeet Randhawa and Nimrat Randhawa.
3. Although further steps could be undertaken (including a forensic audit), the Receiver is confident that its findings are supported by the steps it has taken and that an additional investigation is not required to make the findings that are the subject of this Report.
 4. The remaining sections of this Report should be read in conjunction with the compendium of relevant documents (the "Compendium") which contains excerpts of certain supporting documents that inform the analysis contained in this Report.

3.5 Challenges encountered by the Receiver in the Investigation Mandate

3.5.1 Motion

1. On the date of the Receivership Order, May 26, 2021, Cassels Brock & Blackwell LLP ("Cassels"), counsel to the Receiver, wrote a letter to Bridge Law Professional Corporation ("Bridge Law"), counsel to Motion, requesting access to Motion's premises on May 27 or 28, 2021 to image the server.
2. On May 28, 2021, Bridge Law emailed Cassels to advise that Motion had discontinued operations and a representative could drop off boxes with the business records of Motion the following week. The Receiver advised Bridge Law that it needed to know the location of the server as it required immediate access to the server to image it. On May 31, 2021, Bridge Law emailed the Receiver "that there weren't any servers but there may have been a laptop."¹¹ Mr. Dhindsa subsequently confirmed in his affidavit sworn June 3, 2021 that the sole laptop had gone missing in summer or autumn of 2020.¹² A copy of Mr. Dhindsa's June 3, 2021 affidavit is attached as Appendix "G", with a section of Exhibit A to such affidavit included.

⁹ Email exchange between Rana and N. Goldstein of KSV dated May 27, 2021, Compendium of the Receiver dated September 24, 2021 ("**Compendium**") at Tab A.

¹⁰ Rana's business VISA credit card statement dated September 17, 2018, Compendium at Tab B.

¹¹ Email from C. Bowman to N. Goldstein and N. Levine dated May 31, 2021, Compendium at Tab C.

¹² Affidavit of Baldev Dhindsa, sworn June 3, 2021 (the "**Dhindsa Affidavit**"), Appendix G, at para 13.

3. On June 4, 2021, following the issuance of the Receiver's report on the challenges of obtaining information from Motion, the Court issued an order (the "Motion Order"):
 - a) authorizing the Receiver to examine under oath all current and former contractors, employees and directors and officers of Motion; and
 - b) requiring Motion to disclose the location of any of its electronic records.
4. A copy of the Motion Order is attached hereto as Appendix "H".
5. Since the issuance of the Motion Order, the Receiver has been provided with a single banker's box of Motion's records, Motion's bank statements, certain accounting records from Motion's accountant and access to email records of Motion. On July 21, 2021, the Receiver conducted an examination of Mr. Dhindsa.

3.5.2 ASR

1. Shortly after the Receiver's appointment, all of the ASR staff, including the accountant who had previously assisted with preparation of the financial statements, tendered their resignations. While the Receiver has retained two former employees to assist with asset sales, the process was initially delayed while the Receiver worked to gain access to information without the assistance of the office staff.
2. On July 30, 2021, the Receiver attempted to examine Rana under oath. At the examination, Rana refused to take an oath and adjourned the examination to seek directions from the Court. The full background regarding the examination is provided in the Receiver's Third Report to Court dated August 3, 2021, which is attached as Appendix "I", without appendices.
3. On August 4, 2021, the Honourable Justice Koehnen issued an endorsement requiring Rana to attend an examination under oath (the "August 4 Endorsement"). The August 4 Endorsement is attached as Appendix "J".
4. On August 19, 2021, the Receiver conducted an examination of Rana.

4.0 Findings

4.1 Principal Findings

1. A summary of the Receiver's key findings is provided below:
 - a) Rana was actively engaged with the set-up and operation of Motion to the detriment of the efforts to sell the Trucking Business, including:
 - i. representing or permitting an ASR employee to represent that Motion was "a wholly owned subsidiary of ASR";
 - ii. attempting to secure business for Motion from several of RGC's customers, including Ford Motor Company, which was ASR's largest customer, and Ventra Plastics, which was ProEx's largest customer;

- iii. causing RGC to transfer 13 vehicles to Motion, 3 of which were subsequently transferred to another company beneficially owned by Rana;
 - iv. permitting ASR vehicles and fuel cards to be used to support Motion's business; and
 - v. providing material support to Motion through his sons in the form of labour and capital; and
 - b) consistent with the Arbitrator's findings, Rana delayed the sale of the Trucking Business. Based on the findings above, the Receiver believes this was at least in part in an attempt to further his efforts to transfer business to Motion. Had the Trucking Business been sold in the manner contemplated by the Settlement Agreements in 2019, the Receiver believes, consistent with the evidence from Rana and Paul, that the Trucking Business would have been sold as a going concern. Instead, it was sold during the receivership on a liquidation basis, which in all likelihood represents a significant deterioration of value, as discussed further below.
2. Over the course of its investigation, the Receiver asked Rana to provide further evidence to address the issues identified by the Arbitrator and the Court and the Receiver independently reviewed the Information to corroborate Rana's denials of the allegations. Following his August 19, 2021 examination, Rana's counsel agreed to provide any further information to the Receiver by September 9, 2021, and on September 22, 2021 advised the Receiver that there was nothing Rana wished to bring to the Receiver's attention.¹³ At the examination, Rana also provided several undertakings to provide additional information in response to questions asked by the Receiver which he responded to on September 22, 2021.
3. The Receiver has not identified any evidence to support Rana's denial of the allegations.
4. Further details regarding these findings and other findings by the Receiver are provided below.

4.2 Motion

1. Motion was incorporated in 2018. The corporate profile lists Mr. Dhindsa as the sole director.¹⁴ Mr. Dhindsa testified that that many friends and members of his community, including Rana, are involved in the trucking industry.¹⁵

¹³ Refusals and Undertakings Chart from the Examination of Rana Randhawa on August 19, 2021 and Accompanying Productions response 19, Compendium at Tab D.

¹⁴ Corporate Profile Report re Motion Transport Ltd., current to September 22, 2021, Compendium at Tab E.

¹⁵ Transcript from Examination of Baldev Dhindsa dated July 21, 2021 ("**Examination of Dhindsa**") at p. 34, qq. 145, Compendium at Tab F.

2. Mr. Dhindsa maintained that he is the sole officer and shareholder of Motion and that Rana has no involvement in Motion. At the same time, Mr. Dhindsa had limited knowledge of the operations of Motion and was unable to explain how his business functioned on a day-to-day basis or identify the names of the parties with whom his business regularly interacted.¹⁶ Based on the evidence reviewed, the Receiver has confirmed substantial connections between Rana and Motion as described below.
3. The Receiver has not, at this time, determined or quantified benefits to Rana from his activities with Motion, but notes that Motion's total revenue disclosed to the Receiver for the period 2019-2020 was approximately \$350,000.¹⁷

4.2.1 Corporate Opportunities

1. The Receiver's investigation has confirmed that 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.
2. From a review of ASR's books and records, the Receiver identified several documents that support this finding. For example:
 - a) Ventra Plastics: on August 10, 2018,¹⁸ Tony Colvin, on behalf of ASR, sent an email to Kimberly Garcia, a representative of Ventra, ProEx's only client, with the subject "FW: ASR & Motion Prices for Ventra." A copy of the email is provided below.

From: tony@asrtransport.com <tony@asrtransport.com>

Sent: Friday, August 10, 2018 3:50 PM

To: Kimberly Garcia <kgarcia@FLEXNGATE-MI.com>

Subject: FW: ASR & Motion prices for Ventra

Hi Kim, please see attached 2 quotes, one for ASR Transport and the second for Motion Logistics Transport, which is a wholly owned subsidiary of ASR. Both quotes are in CDN funds.

Also please note that ProEx Logistics no longer part of or has anything to do with ASR Transport, and that Paul Randhawa is no longer with ASR.

Let me know if you are any questions.

Would appreciate your feedback as to how the rates look

Thanks

Tony Colvin

ASR Transportation
2896 South Sheridan Way, Suite 300
Oakville, ON, L6J 7G9
Phone : 905-829-4277

¹⁶ Examination of Dhindsa at p. 16, 17, 27-28, 66 qq. 55, 58-59, 111-113, 281, Compendium at Tab F.

¹⁷ Dhindsa Affidavit, Appendix G, Exhibit "A" at Tab 1-E, "Sales Report".

¹⁸ Email chain among K. Garcia, D. Rawn, and T. Colvin dated November 27, 2018, Compendium at Tab G.

Mr. Colvin provided Ms. Garcia with two quotes for a potential engagement, which he described in the body of the email as follows: "one for ASR Transport and the second for Motion Logistics Transport, which is a wholly owned subsidiary of ASR" (emphasis added). Mr. Colvin also notes in the email that Paul and ProEx, a company managed by Paul, are no longer affiliated with ASR.

Ms. Garcia responded to Mr. Colvin's email on August 21, 2018 and requested more information about Motion (and not ASR). On August 24, 2018, after several further emails relating to Motion's operations, Rana sent a Webex invitation to Ms. Garcia¹⁹ and, subsequently, an invitation for an in-person meeting between Rana, Mr. Colvin and Ms. Garcia, which was scheduled to take place in Michigan on September 24, 2018.²⁰

In November of 2018, Ms. Garcia and Mr. Rawn engaged in further email correspondence, with Rana on copy, wherein they discussed operational delays being incurred by Motion and did not discuss ASR or RGC at all.

At his examination, Rana was unable to explain why Motion was described as a wholly-owned subsidiary of ASR. He indicated that Mr. Colvin may have been working as an independent salesperson (from his ASR email account) and soliciting lanes on behalf of multiple carriers.²¹ The Receiver has found no evidence that Mr. Colvin worked for Motion. Rana also took the position, among other things, that because the October Minutes had not been signed in August 2018, his emails were appropriate.²²

- b) Ford: In an email dated March 15, 2019,²³ a truckload buyer for Ford Motor Company emailed Mr. Dhindsa, with Rana on copy, to advise that she would like to visit Motion's facility and better understand its ownership structure before bringing on Motion as a carrier. A copy of the email is provided below.

¹⁹ Webex Invite from Rana to K. Garcia dated August 24, 2018, Compendium at Tab H.

²⁰ In Person Meeting Invite from T. Colvin to Rana and K. Garcia dated September 24, 2018, Compendium at Tab I.

²¹ Transcript of Examination of Rana Randhawa dated August 19, 2021 ("**Examination of Rana**") at pp.124-127, qq. 384-390, 394, Compendium at Tab J.

²² Examination of Rana Randhawa at pp.126-127, q. 394, Compendium at Tab J.

²³ Email from K. Verstraete to B. Dhindsa and Rana dated March 15, 2019, Compendium at Tab K.

To: Baldev Dhindsa[Baldev.Dhindsa@outlook.com]
Cc: Rana Randhawa[rana@asrtransport.com]
From: Verstraete, Katlyn (K.)[kverstr3@ford.com]
Sent: Fri 3/15/2019 2:03:50 PM (UTC)
Subject: RE: Carrier Survey

Good morning-

Prior to bringing Motion Transport on as carrier, we would like to visit the facility to see the equipment and dispatch. We would also like a better understanding of the ownership structure.

Thank you,

Katlyn Verstraete
Transportation/Truckload Buyer
Ford Motor Company
kverstr3@ford.com
Desk: 313-390-6414
Cell: 313-618-0576

TPO... "The positive GO TO people in purchasing that creatively solve problems and deliver excellent data driven results to our customers."

From: Baldev Dhindsa <Baldev.Dhindsa@outlook.com>
Sent: Wednesday, February 27, 2019 5:01 PM
To: Verstraete, Katlyn (K.) <kverstr3@ford.com>
Subject: Carrier Survey

At his examination, Rana explained that the Ford representative may have copied him because Motion had given Ford his email address.²⁴ Rana's explanation does not address why he was added into an email chain seeking further information on the ownership structure, the equipment or the dispatch of Motion.

The Receiver notes that Ford was ASR's largest customer.²⁵

4.2.2 Sale of Assets to Motion

1. As noted in the Decision, the Arbitrator made findings regarding the transfer of assets between ASR and Motion. The Receiver has investigated the asset transfers by reviewing the relevant records, examining the transfer prices and interviewing the parties involved in the transfers.
2. The Receiver conducted a search of Ministry of Transportation of Ontario records, which revealed that between September 10, 2018 and September 20, 2019, RGC sold and Motion ultimately acquired, thirteen tractors or trailers (the "Impugned Vehicles") which are identified within Tab L of the Compendium.²⁶
3. Of the Impugned Vehicles purchased by Motion, two were purchased directly and the remainder purchased through intermediaries. Six of the Impugned Vehicles were registered as being transferred to Motion on the same day that they were sold by ASR.

²⁴ Examination of Rana at pp. 79-81 qq. 243-248, Compendium at Tab J.

²⁵ Examination of Rana at pp. 12-13 q. 21, Compendium at Tab J.

²⁶ Identification of 13 Impugned Vehicles, Compendium Tab L.

4. In Rana's affidavit filed in connection with Paul's *ex parte* motion to appoint an inspector, Rana gave evidence that he had "no involvement in Motion"²⁷ and that he did not discuss with any of the intermediary purchasers to whom they intended to sell the Impugned Vehicles.²⁸ Rana maintained this position during his examination.²⁹
5. However, on September 1, 2021, a representative of the Receiver spoke with Mr. Watt, the founder of Next Truck, who advised that in 2019, Rana requested that Next Truck act as an intermediary for a sale of a vehicle from ASR to Motion.
6. The Receiver did not engage an appraiser due to its limited budget and the limited data available, but requested that McDougall, the party that is selling RGC's equipment in accordance with the ASA Agreement, provide an estimate of the fair market value of the Impugned Vehicles at the time they were transferred from ASR to Motion. McDougall advised that the Bills of Sale were missing key information normally reflected, including the number of kilometers per vehicle, but, based on the information available, in every case, in their view, the Impugned Vehicles likely had a higher fair market value than their selling price. The Receiver would require additional information and the formal assistance of additional professionals to reach a definitive conclusion on fair market value.

4.2.3 Sale of Assets by Motion

1. Two of the Impugned Vehicles were repurchased by ASR and three were purchased by 2760111 Ontario Ltd. ("276"), an entity beneficially owned by Rana. Rana has provided the Receiver with a trust document that confirms he owns the beneficial interest in 276.³⁰ A summary of these transactions is provided within Tab N of the Compendium.³¹
2. In July 2021, the Receiver was contacted by Next Truck to advise that Rana had asked for assistance with the sale of three trailers that were owned by 276 (and previously owned by Motion). The Receiver and Rana ultimately agreed to a consent order which prohibited Rana from selling assets previously owned or operated by Motion or ASR without the consent of the Receiver. The Receiver believed that this order was necessary to maintain the status quo during the investigation.

²⁷ Affidavit of Rana Randhawa sworn July 31, 2020 (the "**Rana's July 31, 2020 Affidavit**") at para. 8, Compendium at Tab M.

²⁸ Rana's July 31, 2020 Affidavit at para 33, Compendium at Tab M.

²⁹ Examination of Rana at pp. 58-61 qq. 170-180, Compendium at Tab J.

³⁰ Refusals and Undertakings Chart from the Examination of Rana Randhawa on August 19, 2021 and Accompanying Productions at Tab C, Compendium at Tab D.

³¹ Transaction Summary re Impugned Vehicles, Compendium Tab N.

3. In his examination, Rana testified that he is the beneficial owner of 276, a corporation formed with Andre Chin for the purpose of leasing trailers. The Receiver has asked for production of the corporate documents related to 276, but understands that Rana holds no formal position with the company and that the shares are legally owned by Mr. Chin. According to Rana, Mr. Chin is not currently receiving any payment from 276, but their agreement provides that Mr. Chin will operate the company and Rana will be the beneficial owner. Rana further advised that 276 is not operating at this time.³²
4. Rana's evidence is that these vehicles acquired by Motion (and later 276) were unnecessary at ASR and required maintenance. He was unable to explain why the same assets would be beneficial to 276 if they were uneconomical to maintain at ASR or Motion.³³
5. With respect to the vehicles sold from ASR to Motion and back to ASR, Rana testified that he determined that ASR would require these vehicles and approached the reseller to cancel the proposed sales. He did not explain why the trucks had been registered to Motion and were transferred back to ASR.³⁴

4.2.4 Direct Involvement of Rana and His Contacts in Motion's Business

1. The Receiver has identified evidence that Rana directed, facilitated or was otherwise involved in the operations of Motion both directly and through his family and business contacts.
2. Notwithstanding the fact that Motion and ASR used the same vehicles and had similar customers, Rana maintained that Motion was not a competitor of ASR.³⁵
3. The Receiver's relevant findings are as follows:
 - a) Rana Randhawa's Authorization to Act for Motion: In an undated letter from Mr. Dhindsa, on behalf of Motion, to Service Ontario, Mr. Dhindsa requested that Rana be granted authorization for licensing purposes to act on Motion's behalf to register an Ontario license for vehicles identified as VIN 1M1AW07Y8DM031638 and VIN 4V4NC9GF16N446881, respectively.³⁶ In an unsigned letter dated December 20, 2019 from Mr. Dhindsa, on behalf of Motion, to Service Ontario, Mr. Dhindsa requested that Rana be granted authorization for licensing purposes to act on Motion's behalf in respect of a vehicle identified as VIN 3AKJGLDV2FSGF9918. A copy of one of these letters is provided below:

³² Examination of Rana at pp. 45-49, qq. 115-129, Compendium at Tab J.

³³ Examination of Rana at pp. 44-45, 59 qq. 110-112, Compendium at Tab J.

³⁴ Examination of Rana at pp. 38-39 q. 85, Compendium at Tab J.

³⁵ Examination of Rana at p. 65, q. 192, Compendium at Tab J.

³⁶ Undated Letter from Mr. Dhindsa to Service Ontario, Compendium at Tab O. The vehicles in this letter are two vehicles that were transferred from ASR to Motion, further undermining Rana's statements that he was unaware of the ultimate purchasers of the vehicles.



7 Islington Drive,
Brampton, ON L6P 3A6
T (905) 339-4333
F (905) 339-4334

20/12/19

SERVICE ONTARIO: To whom this may concern,

This document gives Rana Randhawa authorization to act on our behalf for Ontario licensing purposes for a 2015 Freightliner Cascadia VIN#3AKJGLDV2F5GF9918.

Regards,

Baldev Dhindsa, President/Ceo
MOTION TRANSPORT LTD.

At his examination, Rana denied any recollection of these letters.³⁷ The Receiver cannot confirm that either of these letters were provided to Service Ontario. However, the first letter, along with Motion documents from the United States Department of Transportation,³⁸ was found on Rana's smartphone following the Receiver's collection and review of data pursuant to the Protocol.³⁹

- b) Subeet Randhawa's Role at Motion and ASR: During his examination under oath, Mr. Dhindsa described Subeet's role at Motion during his employment from November of 2019 until August 2020. In particular, Mr. Dhindsa testified that Subeet managed much of Motion's paperwork and, excluding Mr. Dhindsa, was the only employee authorized to buy and sell vehicles on Motion's behalf at the time he worked for Motion.⁴⁰

³⁷ Examination of Rana at pp. 96-97, 100-101 qq. 303-310, 320-325, Compendium at Tab J.

³⁸ US Department of Transportation Authorization dated January 24, 2019, Compendium at Tab P.

³⁹ Metadata report downloaded from Relativity on September 12, 2021, Compendium at Tab Q.

⁴⁰ Examination of Dhindsa, p. 29-30, 69 qq. 119, 121, 296-298, Compendium at Tab F.

One of the red flags identified by the Arbitrator was the fact that Subeet had not been paid by Motion for his services. However, Motion's bank records show that Motion issued two cheques to Subeet, one in the amount of \$8,190 for pay and one in the amount of \$5,527.78 for "repair remit".⁴¹ The Receiver notes that these cheques were issued following Subeet's examination in the arbitration proceedings.⁴² ASR also paid a salary to Rana's sons Subeet and Nimrat, during this time, but Rana provided evidence that these payments were consistent with past practice and unrelated to Motion.⁴³

- c) Nimrat Randhawa's Loan to Motion: In 2019, Rana's son, Nimrat, loaned Motion approximately \$30,000 in cash to help fund Motion's operations. Mr. Dhindsa testified that Nimrat did not charge any interest on the loan and, although Nimrat's request for payment had ceased over a year ago, the loan remained outstanding.⁴⁴

In his examination, Rana confirmed that the money in his son's account was his money and that his son had asked for his advice or permission before making the loan to Motion.⁴⁵ Rana also confirmed that Nimrat is 20 years old (meaning that at the time of the loan, he would have been approximately 18 years old).⁴⁶

Notwithstanding Mr. Dhindsa's evidence that the loan was never repaid, Motion's banking records reflect a bank draft to Nimrat Randhawa in the amount of \$46,000 on June 29, 2020.⁴⁷ The distribution was made to Nimrat on the same day that 276 wrote a cheque for \$44,974 to Motion for the purchase of three trailers. The Receiver does not know why Motion would have made a payment to Nimrat other than as repayment of the outstanding loan. The Receiver also notes that 276's bank records show a deposit of \$46,000 to 276 on July 2, 2020 and a further cheque to Nimrat on August 21, 2020, also in the amount of \$46,000.⁴⁸

⁴¹ Email chain among Rana and MDP Accountants re "RANA and FAMILY 2020 TAX DOCUMENTS" dated April 28-29, 2021, Compendium at Tab R; Cheques #95 and #96 from Motion to Subeet Randhawa, Compendium at Tab S.

⁴² The Cheques in the Compendium at Tab S are dated August 28, 2020 while Subeet Randhawa was examined on August 25, 2020.

⁴³ Affidavit of Rana Randhawa sworn August 16, 2020 at para 6 and Exhibit "A", Compendium at Tab T; T4 Statement of Remuneration Paid to Nimrat Randhawa for year 2020, Compendium at Tab U.

⁴⁴ Examination of Dhindsa at pp. 22-24, 26 qq. 78-80, 85-88, 100-102, Compendium at Tab F. Mr. Dhindsa testified that the loan was made in cash (Examination of Dhindsa at p. 24, qq. 86-90, Compendium at Tab F), but Rana provided evidence that the loan was made by cheque (Refusals and Undertakings Chart from the Examination of Rana Randhawa on August 19, 2021 and Accompanying Productions at response 11, Compendium at Tab D). The Receiver cannot confirm this based on the current Motion records.

⁴⁵ Examination of Rana at p. 153 qq. 497-502, Compendium at Tab J.

⁴⁶ Examination of Rana at p.150, qq. 480-482, Compendium at Tab J.

⁴⁷ Cheque dated June 29, 2020 from Motion Transport Ltd. to Nimrat Randhawa, Compendium at Tab V.

⁴⁸ Bank Records of 276011 Ontario Ltd., located at Refusals and Undertakings Chart from the Examination of Rana Randhawa on August 19, 2021 and Accompanying Productions at Tab B, Compendium at Tab D.

- d) Maryam Tehrani's Role at Motion: Maryam Tehrani was an employee of ASR who departed and then returned to ASR in 2018, around the time that Motion was incorporated.⁴⁹ The Receiver located a business card for Ms. Tehrani which identifies Ms. Tehrani as the CFO of Motion, a copy of which is found within Tab W of the Compendium.⁵⁰ When presented with this business card during his examination under oath, Mr. Dhindsa testified that he had never seen the business card or heard of Ms. Tehrani, that he believed the email address on the business card to be invalid.⁵¹

At his examination, Rana denied any knowledge of Maryam's involvement in Motion.⁵²

4.2.5 Use of ASR Corporate Resources

1. The Receiver confirmed that ASR permitted the use of ASR resources for Motion's benefit. By way of example:
 - a) Mr. Rawn provided sworn evidence as to his understanding that ASR fuel cards were used to fuel Motion trucks, at Rana's authorization.⁵³ This further supports the findings in the PI Report which found that Subeet fueled a Motion vehicle at a gas station at around the same time that an ASR gas card was used at that gas station.⁵⁴
 - b) In an email dated June 17, 2019 to Mr. Rawn from an employee of a warehousing company used by ASR⁵⁵, the employee expresses that he understood "that there are 3 new trailers for Motion Transport" in its storage yard and that "they will be there for several months." Mr. Rawn, with Rana on copy, replied that storage of Motion's trailers should be invoiced to ASR.
 - c) Mr. Rawn provided sworn evidence that, at Rana's instruction, he would sometimes assist Subeet in operating Motion because Subeet did not know how to manage a trucking business.⁵⁶ By way of limited example, the Receiver uncovered an email dated January 10, 2020⁵⁷ between Subeet, on behalf of Motion, and a Motion customer relating to an upcoming engagement, on which Mr. Rawn is copied notwithstanding that the correspondence was entirely unrelated to ASR.

⁴⁹ Examination of Rana at pp. 158-159 qq. 521-523, Compendium at Tab J.

⁵⁰ Motion Transport Ltd. business card stating "Maryam Tehrani, C.F.O.", Compendium at Tab W.

⁵¹ Examination of Dhindsa at pp. 13-15 qq. 34-45, Compendium at Tab F.

⁵² Examination of Rana at p. 160, qq. 527-529, Compendium at Tab J.

⁵³ Affidavit of David Rawn sworn September 18, 2021 (the "**Rawn Affidavit**"), at para 7, Compendium at Tab X.

⁵⁴ Affidavit of D. Colbourn sworn June 26, 2020 at Appendix A, p. 207, Compendium at Tab Y.

⁵⁵ Email dated June 17, 2019 from D. Rawn to D. Hubner of Krewcorp, Compendium at Tab Z.

⁵⁶ Rawn Affidavit, para 5, Compendium at Tab X.

⁵⁷ Email dated January 10, 2020 from D. Rawn to D. Robertson and Dispatch at Motion, Compendium at Tab AA.

- d) An email dated February 28, 2020⁵⁸ from an employee of a maintenance company to accounts@asrtransport.com attaches an invoice that includes charges for services performed on a vehicle registered to Motion. At his examination, Rana offered the explanation that the invoice was likely rendered in error.⁵⁹
- e) Rana gave evidence that, beginning in or around March of 2020, ASR permitted one of its drivers, Narinder Singh, to work for Motion while receiving a salary from ASR. Rana advised that he permitted Mr. Singh to remain on ASR's payroll due to complications associated with maintaining Mr. Singh's working visa and, further, that the salary that ASR paid Mr. Singh during this period was a loan that Mr. Singh would be required to repay, which was memorialized in a loan agreement.⁶⁰ The loan agreement was entered into on June 20, 2020, months after Mr. Singh received the payments from ASR, and made no reference to any of the payments that Mr. Singh had already received. From a review of Motion's records, it appears that Mr. Singh's company, 9733771 Canada Inc., was issued cheques for "pay" as early as December 2019. However, the Receiver has not been able to confirm if Mr. Singh ever repaid the purported loan from ASR.
- f) Rana gave evidence that ASR lent a truck to Motion for use by Mr. Singh on Motion's behalf without receiving any compensation from Motion.⁶¹
- g) An email dated May 1, 2020⁶² from Motion to a customer attached two invoices for services rendered by Motion in respect of which Motion was to receive payment. The first invoice⁶³ listed the trailer utilized by Motion as Trailer #R53003, which trailer belonged to ASR, and the driver utilized by Motion as "Branden", which is believed to be Branden Goncalves, another of ASR's drivers. The second invoice⁶⁴ lists the truck and trailer utilized by Motion as Truck #191 and Trailer #R53003, respectively, both of which belonged to ASR, and the driver utilized by Motion as Narinder Singh. The carrier listed on the invoice was ASR and not Motion. At his examination, Rana explained that because the truck had an ASR decal on the side, the paperwork may have been completed incorrectly.⁶⁵
- h) Mr. Rawn advised the Receiver that he frequently observed Nicolas Peet, one of ASR's drivers, driving an ASR truck on Motion's behalf.

⁵⁸ Email dated February 28, 2020 from F. Sowdagari of Snap Diesel Emission to ASR's accounts department, Compendium at Tab BB.

⁵⁹ Examination of Rana at pp. 103-106 qq. 331-340, Compendium at Tab J.

⁶⁰ Loan Agreement dated June 20, 2020 between ASR and Narinder Singh, Compendium at Tab CC.

⁶¹ Rana's July 31, 2020 Affidavit at paras. 84-85, Compendium at Tab L; Examination of Rana, pp. 93-94 q. 297 Compendium at Tab J.

⁶² Email from Motion's Accounts Department to gppod@flstransport.com dated May 1, 2020 ("**May 1, 2020 Motion Accounts Email**"), Compendium at Tab DD.

⁶³ May 1, 2020 Motion Accounts Email, attachment M0305, Compendium at Tab EE.

⁶⁴ May 1, 2020 Motion Accounts Email, attachment M0304, Compendium at Tab FF.

⁶⁵ Examination of Rana at pp. 94-95 qq. 298-300, Compendium at Tab J.

2. The Receiver put these findings to Rana and he was unable to provide any reasonable explanation. The Receiver notes that each of these examples relates to small dollar value items, but they demonstrate a pattern of using ASR resources to the benefit of Motion, while Rana and Paul were supposed to be selling RGC.

4.3 Delay in the Sale of the Trucking Business

1. The Investigation Mandate extends to, among other things, investigation of the matters raised before the Arbitrator, including the reasons for the delay in the sale of the Trucking Business. The Arbitrator found that “Rana has perpetuated a lack of transparency into the operations of ASR, and lack of good faith into providing the financial, operational and other relevant information required to secure the sale of the Trucking Business.”⁶⁶
2. After reviewing the Court Materials, the Receiver independently investigated and made the following determinations:
 - a) the major impediment to selling the Trucking Business as a going concern was the failure to timely complete financial statements and tax returns required by potential brokers for the business;⁶⁷
 - b) from the time of the execution of the October Minutes, the RGC office, which worked under Rana’s day-to-day supervision, had the responsibility for completing the financial statements;⁶⁸
 - c) notwithstanding Paul’s understanding that the RGC office would be completing the financial statements, Paul repeatedly attempted to engage with the RGC office and RGC accountants to finalize the financial statements;⁶⁹
 - d) the Receiver gave Rana the opportunity to provide any evidence that he was not responsible for the delay in providing the financials and related tax returns and that he was working to expeditiously complete such documents; and
 - e) the Receiver believes that 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.

⁶⁶ October Award, Appendix F to Report, at para 293.

⁶⁷ Examination of Rana at pp. 206-210, qq. 657-659, Compendium at Tab I; Affidavit of Paul Randhawa sworn June 26, 2020 (“**Paul’s June 26, 2020 Affidavit**”), at paras 7-9, Compendium at Tab GG.

⁶⁸ See Letter from Kreaden to Lessman dated October 29, 2018 which sets out Paul’s understanding in this regard and, as far as the Receiver can tell, was not disputed by Rana at the time, Paul’s June 26, 2020 Affidavit at Exhibit 12, Compendium at Tab GG.

⁶⁹ Paul’s June 26, 2020 Affidavit at Exhibits 15, 16 and 17, Compendium at Tab GG.

3. In response to the allegations by Paul and the findings made by the Arbitrator, Rana testified that: (a) following entry into the October Minutes, he instructed his accountants to complete the financials for ASR and 222 (a real estate holding company), but that Paul had refused to sign the documents; and (b) the companies for which Paul was responsible had failed to file taxes for many years; in some instances, according to Rana, tax returns had never been filed.⁷⁰
4. The Receiver asked Rana to provide any evidence or direct the Receiver to documents that show that Paul was responsible for the delay in preparing the financial statements following entry into the Minutes of Settlement, but other than the statement that it was Paul who refused to sign the financials, Rana has not provided any evidence on this point.⁷¹
5. The evidence including the documents attached as Tab DD to the Compendium⁷² support Paul's position that he historically relied on RGC's staff to complete the financial statements for ProEx, but that following the October Minutes, he was unable to obtain timely information from the office staff. In an email dated January 9, 2019, Rana's counsel confirms to Paul's counsel that it is the obligation of RGC to prepare financial statements and tax returns for all RGC entities.⁷³
6. In response to Rana's assertion that Paul refused to sign off on ASR's 2018 financial statements, the Receiver made inquiries of Paul, who directed the Receiver to his Affidavit sworn on August 10, 2020 in which at paragraph 9 (e) states as follows "I do not know how Rana's personal expenses that ultimately were agreed to be Unequal Benefits pursuant to the UB Minutes have been accounted for in the books and records, which of course needs to be addressed in order to finalize financial statements for the sale of the RGC Trucking Business".⁷⁴
7. Had Rana been working in good faith to sell the business as required by the October Minutes, the Receiver is of the view that the business could have been sold within six months of the October Minutes.

⁷⁰ Examination of Rana at pp. 162-165 qq. 541-543, Compendium at Tab J.

⁷¹ Examination of Rana at pp. 162-165, 206-210 qq. 541-543, 657-659 Compendium at Tab J.

⁷² Paul's June 26, 2020 Affidavit at paras 32 to 43, Compendium at Tab GG.

⁷³ Paul's June 26, 2020 Affidavit at Exhibit 17, Compendium at Tab GG.

⁷⁴ Affidavit of Paul Randhawa sworn August 10, 2020 at paragraph 9(e), Compendium at Tab HH.

5.0 Initial Damages Considerations

1. For purpose of this Report only, the Receiver provides the following preliminary observations regarding the potential diminution in value as a result of the delay in the sale and the diversion of assets to Motion. Due to budget constraints, the Receiver has not at this time engaged an independent valuations expert to value the Trucking Business as of October 2018. The Receiver understands that such a valuation would cost between \$30,000 and \$40,000.
 - a) For purposes of this analysis, the Receiver assumes that the assets and opportunities diverted to Motion would have been included in the value of ASR as of the date of the October Minutes.
 - b) The Receiver consulted with the valuations group at the Receiver's firm and understands that trucking businesses of this size are typically valued based on a multiple of EBITDA, subject to certain adjustments.
 - c) The Receiver is in possession of unaudited financial statements prepared by ASR and ProEx's external accountants for the years ended September 30, 2017 ("Fiscal 2017") and 2018⁷⁵ ("Fiscal 2018"). The statements reflect EBITDA of approximately \$1.3 million for Fiscal 2017 and \$925,000 for Fiscal 2018. The Receiver understands that there are personal expenses totaling at least \$350,000 for each fiscal year included in EBITDA that would be required to be adjusted in order to calculate maintainable EBITDA.⁷⁶ Additional work will be required to update the financial statements and permit the Receiver to obtain a valuation as of October 2018.
 - d) The Receiver is currently conducting a claims process to identify the claims against RGC. Based on ASR's records, the Receiver expects that there will be between \$1 million to \$1.5 million to distribute to ASR's shareholders, which could increase based on realizations on accounts receivable, shareholder loans and/or the results of the claims process.
 - e) Rana is of the view that the value of ASR increased since 2017/2018 due to additional vehicles purchased since 2017/2018.⁷⁷ As set out above, the Receiver believes that a going concern sale in 2018 would have returned more value than a liquidation sale.

⁷⁵ As noted above, the 2018 financial statements were not finalized.

⁷⁶ Subject to preliminary review and further analysis.

⁷⁷ Refusals and Undertakings Chart from the Examination of Rana Randhawa on August 19, 2021 and Accompanying Productions response 13, Compendium at Tab D.

2. Upon conclusion of the claims process and the auction, and with the information from an independent valuator, the Receiver will be better positioned to make a recommendation on the costs and benefits of commencing litigation.
3. In light of the fact that the Receiver anticipates making distributions in an amount necessary to satisfy all creditors, the shareholders of the business are expected to be the only parties with a remaining interest in the proceeds of the liquidation and any claims owned by RGC. Given that the potential claims (described below) would be brought against Rana and other parties, the Receiver believes that Paul is likely the party with the economic interest in the outcome of the RGC Causes of Action and his views on such claims should be considered.

6.0 Potential Causes of Action and Remedies

6.1 Potential Causes of Action

1. In order to address the harm to RGC arising from the dissipation of assets and the delay in the sale of RGC, the Receiver has considered the potential causes of action available.
2. Breach of Fiduciary Duty. Under the OBCA, directors have an obligation to act in best interest of the corporation. More specifically, a director of a corporation may not, without the approval of the corporation, usurp an opportunity or advantage of the corporation, either directly or indirectly. The Receiver is of the view that, based on the facts outlined above, the corporation can assert a claim against Rana in connection with his diversion of assets and corporate opportunity to Motion. In the alternative, this claim may be available to Paul under section 246 of the OBCA.
3. Oppression. The oppression remedy prescribed under section 248 of the OBCA outlines the following grounds on which an oppression remedy can be sought:

248(2) Where, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates,

(a) any act or omission of the corporation or any of its affiliates effects or threatens to effect a result;

(b) the business or affairs of the corporation or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner; or

(c) the powers of the directors of the corporation or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

Based on the facts set out above, the Receiver believes that the Receiver on behalf of RGC, may assert an oppression claim to recover any value lost during the delay in the sale of the Trucking Business. In the alternative, Paul may assert claims as a security holder.

4. Transfer at Undervalue. Section 96 of the *Bankruptcy and Insolvency Act*⁷⁸ permits a trustee in bankruptcy to declare a transfer at undervalue void as against the trustee and permits the trustee to seek recovery from the party to the transfer or any other party “privity” to the transfer. Should ASR become bankrupt, potential claims against Motion, as the transferee and Rana, as a party privity to the transfers, could be asserted.⁷⁹ Similar actions may be available under the *Fraudulent Conveyances Act* or the *Assignments and Preferences Act*.

At this time, the Receiver is not seeking authority to commence these actions. If the Receiver later determines that RGC is insolvent or was insolvent at the time of the transaction and that the vehicles were transferred at undervalue, the Receiver may take steps in that regard, or seek further direction from the Court.

6.2 Potential Resolutions

1. In order to recover the value that would have otherwise been available to RGC if the Trucking Business was sold as a going concern shortly following the October Minutes, the Receiver has identified three options:
 - a) Litigation: If authorized by the Court, the Receiver could commence one or more of the claims described above. While the Receiver believes the claims to be meritorious, there is inherent risk in litigation. Moreover, the Receiver would require any amounts in excess of those required to pay unsecured claims to be held back in order to fund the costs of any litigation, including any potential costs awards.
 - b) Sale Process: Consistent with the Sale Mandate, the Receiver could engage in a sale process with respect to the claims owned by RGC. The Receiver notes that this process may allow Rana, Motion and any other defendants to put a price on the potential risk in litigation and may allow a settlement of the claims based on the market available for the RGC Causes of Action. However, given that certain claims may be available to Paul, any such process would likely require a settlement or release of claims owned by Paul.
 - c) Mediation: Notwithstanding the acrimonious history between the parties, a mediated settlement, if possible, would avoid the time and expense of litigation. A tri-party mediation between Paul, Rana and the Receiver may be a productive use of the parties’ efforts.

6.3 Recommendation and Request for Advice and Directions

1. Based on the information available to it today, the Receiver recommends that the Court grant an order permitting the Receiver to (a) retain a valuation expert to provide an independent valuation, and (b) solicit interest from potential purchasers of the RGC Causes of Action against Rana, Motion and other parties.
2. The Receiver notes that the Sale Mandate and the Investigation Mandate are, at this stage, intertwined because the recommendations outlined herein will further the return of assets to RGC that would otherwise be captured in the Sale Mandate. The Receiver is seeking confirmation that it may use the proceeds of the Trucking Business to pay its fees and expenses in connection with the Investigation Mandate in excess of the

⁷⁸ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

⁷⁹ Claims will need to be assessed on an entity by entity basis.

\$150,000 previously funded by Paul. As noted above, the Receiver and its legal counsel have incurred approximately \$275,000 through August 31, 2021 and expect that the additional steps set out herein will require funding of approximately \$100,000.

3. While the Receiver currently expects to make distributions to shareholders, if additional claims are identified pursuant to the claims process or the sale proceeds are significantly less than expected, realization on any RGC Causes of Action will be important to creditors of RGC to ensure that the Receiver can maximize amounts available for distribution.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
RGC
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “C”

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

THE HONOURABLE MISTER) THURSDAY, THE 16th
)
JUSTICE KOEHNEN) DAY OF SEPTEMBER, 2021

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

**ORDER
(Restrictions on Transactions)**

THIS MOTION made by KSV Restructuring Inc. ("**KSV**"), in its capacity as receiver and manager (in such capacities, the "**Receiver**") without security, of all the assets, undertakings and property (collectively, the "**Property**") of 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. (collectively, "**RGC**") acquired for, or used in relation to a business carried on by RGC, was heard by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis;



ON READING the Amended Notice of Motion of the Receiver dated September 13, 2021, the Supplement to the Fourth Report of the Receiver dated September 13, 2021, and upon hearing the submissions of counsel for the Receiver and counsel for the other parties appearing on the Participant Information Form; and no one else appearing although duly served as appears from the affidavits of service of Kieran May sworn September 13 and 15, 2021, filed;

RESTRICTION ON TRANSACTIONS

1. THIS COURT ORDERS that, until the Receiver is discharged or further order of this Court, Rana Partap Singh Randhawa ("**Rana**") shall not, directly or indirectly, enter into any agreement to encumber, dispose of, transfer, or acquiesce to the encumbrance or transfer of any assets in which he has a legal or beneficial interest (i) in a single transaction with a value of over \$10,000 or (ii) in multiple transactions within a 30-day period with a value over \$30,000, unless he has provided 15 days' notice to the Receiver in writing and the Receiver has not objected to such transaction. For the avoidance of doubt, the property at 11132 5th Line, Georgetown, Ontario (the "**Georgetown Property**") shall be subject to the restrictions set forth in this Order.

2. THIS COURT ORDERS that until the Receiver is discharged or further order of this Court, Rana shall not enter into transactions or other arrangements by which Rana, directly or indirectly, transfers outside of Ontario any money or other assets in which he has a legal or beneficial interest regardless of the amount, unless he has provided 15 days notice to the Receiver in writing and the Receiver has not objected to such transaction.

3. THIS COURT ORDERS that payments on account of legal fees payable to Lenczner Slaght LLP (including any disbursements) and professional fees, any amounts otherwise ordered payable by this Court and the existing mortgage on the Georgetown Property shall not be subject to this Order.

4. THIS COURT ORDERS that if the Receiver objects to a transaction, the Receiver shall seek advice and direction from the Court at the earliest available date before Mr.

Justice Koehnen and the Receiver shall make best efforts to have that date scheduled within the 15-day notice period. Rana will not engage in the transaction until the matter is heard and decided by Mr. Justice Koehnen.

5. THIS COURT ORDERS that within 3 business days of this Order, Rana and/or Sukhdeep Randhawa shall make disclosure to the Receiver of any transactions from the proceeds of the encumbrance on the Georgetown Property prior to the date of this Order. If requested by the Receiver, Rana and/or Sukhdeep Randhawa shall attend at an examination under oath before an Official Examiner in Toronto, on a date selected by the Receiver, with a minimum of 5 days' notice, and answer questions propounded to them by counsel for the Receiver with respect to the disclosure obligation stated within this paragraph.

COSTS

6. THIS COURT ORDERS costs of this motion in the amount of \$15,000 payable by Rana to the Receiver forthwith.

GENERAL

7. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

9. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the

terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

10. THIS COURT ORDERS that Rana may seek to vary or discharge this order on 15 days' notice to the Receiver.

A handwritten signature in blue ink, consisting of stylized initials that appear to be 'RAJ'.

SWINDERPAL SINGH RANDHAWA
Applicant

and

RANA PARTAP SINGH RANDHAWA, et al.
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

**ORDER
(Restraining Transactions)**

CASSELS BROCK & BLACKWELL LLP
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Lawyers for KSV Restructuring Inc. in its capacity as
Receiver

Appendix “D”

CITATION: Randhawa v. Randhawa
COURT FILE NO.: CV-18-593636-00CL
DATE: 20210916

SUPERIOR COURT OF JUSTICE – ONTARIO

(Commercial List)

RE: 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

BEFORE: Koehnen J.

COUNSEL: *John Picone, Natalie Levine* for the Receiver

Aaron Kreaden, for the Applicant

Lauren Mills Taylor, Shara Roy for the Respondents

HEARD: September 16, 2021

1. The Investigative Receiver in this matter seeks a variety of forms of relief. Almost all are agreed to. I have signed and attached orders relating to the unopposed relief. Those

orders relate to the sale of assets of a trucking business of which each of Paul and Rana owned 50%.

2. The only wrinkle in those orders is the request for a sealing order. The sealing order relates to the valuation of assets that an auctioneer is prepared to auction off.
3. I am satisfied that the sealing order meets the requirements *Sherman Estate v. Donovan*, 2021 SCC 25. Disclosing the confidential information protects a serious public interest, namely the interest of the two stakeholders to receive as much for their assets as possible. If that information were disclosed and the current proposal did not proceed, publication of the information could impair the value that the shareholders are able to receive for their assets in any subsequent transaction. The extent of the sealing is limited purely to the commercial terms on which the assets are being sold. The benefits of sealing that information outweigh the harm that would be caused if it were publicly disclosed.
4. The more contentious aspect of the relief the Investigative Receiver seeks is an order requiring Rana and his wife, Sukhdeep Randhawa to disclose what use they made of proceeds of a mortgage of approximately \$2.4 million on their family home which mortgage they entered into after the Receiver was appointed.
5. Rana opposes that order. He submits that such relief goes beyond the purpose of the receivership, would essentially appoint the Receiver as the personal Receiver of Rana and his wife without proper evidence, that the request for information about the mortgage is

grounded in Paul's speculation that he may be entitled to money from Rana, and that Sukhdeep is not a party to the proceedings and has not been served with them. Rana notes in particular that in appointing the Investigative Receiver, I noted that the receivership "should be carefully tailored to what is required to assist in the recovery while protecting the defendant's interests, and go no further than is necessary to achieve these ends": *Randhawa v. Randhawa* 2021 ONSC 3643 at paragraph 55.

6. The Receiver was appointed after the arbitrator in a proceeding between Paul and Rana had no success in obtaining sufficient information about the trucking business from Rana. The arbitrator appointed an inspector and directed the parties to move before this court if the inspector required powers against individuals who are not parties to the arbitration. The receivership and inspectorship orders authorize the Receiver to investigate the trucking business, including that of Motion Transportation.
7. The underlying concern was that Rana had a practice of moving money around with the possible effect of depriving Paul of his rightful share of the business. The arbitrator clearly came to that view. He noted that Rana had not acted in good faith, had not acted with transparency, and had failed to meet his disclosure obligations. In addition, the arbitrator made several findings that amounted to red flags for fraud: *Randhawa v. Randhawa* 2021 ONSC 3643 at paragraph 40-41.

8. The Receiver has become concerned about what appears to be a pattern of Rana dissipating his assets before the receiver submits its investigative report to the court. One issue in this regard is a \$2.4 million mortgage on his residential home.

9. There is some background to this transaction. When Paul was concerned that Rana was dissipating his assets, he asked about whether Rana was planning to sell his home. Rana denied that intention. Rana was then confronted with evidence that the house was being marketed for sale by a real estate agent. Rana then indicated that the intention had been to sell the house but that intention had now changed. Following those exchanges, the mortgage was registered. Paul then made inquiries about what the purpose of the mortgage was and what the funds were used for. Rana raised no objections to answering those questions. After a lengthy series of emails Rana answered that the house was in his wife's name, his wife had obtained the mortgage, and he was making inquiries with his wife about the use of the mortgage proceeds. When counsel followed up, Rana ultimately advised that "as a result of marital strife, he is unable to obtain the information sought with respect to the mortgage proceeds."

10. That answer is not credible. Rana is a guarantor of the mortgage. It is simply not believable that he would guarantee a \$2.4 million mortgage without having any knowledge of the purpose of the funds. The "marital strife" was a bald allegation. It was made in an email from his counsel to Paul's counsel. Rana has provided no evidence of efforts made to obtain the information. If it is in fact true that Rana cannot obtain this

information from his wife, then he should welcome the Receiver's efforts to obtain information about the use of \$2.4 million that Rana has guaranteed.

11. Rana's answer strikes me as a continuation of the lack of transparency that has made this whole matter as costly and time-consuming as it has been.
12. The lack of transparency is further complicated by the fact that Rana gave a series of undertakings on an examination. He committed to provide answers to those undertakings on September 9, 2021. He has not done so. Those undertakings include asking his wife about the details of the listing of the property on which the mortgage was ultimately placed. There are also a series of opaque financial transactions between Rana, his sons and Motion Transport.
13. Given that Rana claims he has no information about the use of the mortgage funds, it is appropriate for the investigator to seek that information from Rana's wife. I note that Sukhdeep is President and director of at least one of the transportation company businesses, Subeet Carriers Inc.
14. The Receiver notes in particular that if Rana is found to owe money to the business, the use of the proceeds of the mortgage could become particularly relevant. Rana submits through counsel that there has been no finding that he owes money to the business. The Receiver, rightly in my view, responds that the issue is not whether Rana owes money to the business but whether there is a basis to investigate that issue. The Receiver notes

further that it is obliged to report to the court, it cannot properly report to the court if it is not allowed to investigate what it believes should be investigated.

15. The Investigative Receiver's role is to investigate. The Receiver states it reasonably believes Sukhdeep has information relevant to the investigation. I am reluctant to require the Receiver to spell out in granular detail the specific way in which the use of the proceeds of the mortgage relates to its investigation. I am concerned that doing so will only lead Rana and his family members to further acts of deception. Requiring the Receiver to provide granular detail only gives Rana a roadmap of how to defeat the Receiver's investigation.

16. Given that the whole investigation is about the movement of money relating to the transportation business, Rana has admitted that money from the transportation business went into the house and given a series of opaque transactions between the transportation business, Motion Transport and Rana's family members, I am satisfied that the Receiver should be taken at its word if it says it reasonably believes that Sukhdeep has information relevant to the investigation.

17. The information the Receiver requests falls within the scope of its Investigative Mandate. Paragraph three of the amended and restated order appointing the Receiver provides that the Receiver is empowered to, among other things:

(ii) Investigate and report on any financial and operational issues ... and any other matters identified during the course of the Receiver's

investigation, in order to ensure that the Trucking Business is being sold in a manner that maximizes the value of that business.

18. For the foregoing reasons, I order Rana and Sukhdeep to disclose to the Receiver the use of the proceeds of the mortgage of the family home entered into following the commencement of the Receivership. As part of that disclosure obligation the Receiver will be entitled to examine either or both of Rana and Sukhdeep. If an examination occurs, neither Rana nor Sukhdeep will be entitled to attend the examination of the other.

Costs

19. The Receiver seeks costs of \$15,000 from Rana. Rana submits that if a cost order is made, it should be limited to \$5,000.

20. I order Rana to pay the Receiver's costs which I fix at \$15,000. That amount is payable within 30 days. As the Receiver noted, its request for costs is limited to the amended notice of motion and the Supplement to the Receiver's Fourth Report. Both of those documents relate primarily to the disclosure of mortgage information; not to issues that had been agreed to.



Koehnen J.

Date: September 16, 2021

Appendix “E”



**Supplement to the Fourth Report of
KSV Restructuring Inc.
as Receiver and Manager of 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.**

September 13, 2021

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COURT FILE NO. CV-18-593636-00CL

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

SUPPLEMENT TO THE FOURTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

SEPTEMBER 13, 2021

1.0 Introduction

1. This report (“Supplemental Report”) supplements the Receiver’s Fourth Report to Court dated September 8, 2021 (“Fourth Report”).
2. Unless otherwise stated, capitalized terms used in this Supplemental Report have the meanings provided to them in the Fourth Report.
3. This Supplemental Report is subject to the restrictions in the Fourth Report.

1.1 Purpose

1. The purposes of this Supplemental Report are to:
 - a) provide information regarding certain transactions completed and/or contemplated by Rana or his wife, Sukhdeep Randhawa (“Sukhdeep”); and

- b) recommend the Court issue an order, among other things:
 - i. restraining Rana from entering into any agreement to encumber, dispose of, transfer, or acquiesce to the encumbrance or transfer of any assets in which he has a legal or beneficial interest: (i) in a single transaction with a value of over \$10,000; or (ii) in multiple transactions within a 30-day period with a value of over \$30,000, unless he has provided 15 days' notice to the Receiver in writing and the Receiver has not objected to such transaction;
 - ii. restraining Rana from entering into transactions or other arrangements by which Rana directly or indirectly transfers outside of Ontario any money or other assets in which he has a legal or beneficial interest unless he has provided 15 days' notice to the Receiver in writing and the Receiver has not objected to such transaction; and
 - iii. requiring Rana and/or Sukhdeep to provide the Receiver with details regarding the use of proceeds of a \$2.4 million mortgage (the "Georgetown Mortgage") registered on July 5, 2021 against their matrimonial home located at 11132 Fifth Line, Georgetown, Ontario (the "Georgetown Property").

2.0 Background

1. Since 2018, Paul and Rana have been involved in a dispute concerning, *inter alia*, the ownership, operation and sale of RGC. The Receiver is currently conducting its investigation into certain allegations against Rana, which may result in actions against Rana.
2. Pursuant to an order of the Court made on May 26, 2021, KSV was appointed as Receiver. The Receivership Order was amended and restated on June 4, 2021.
3. Shortly after the Court issued the Receivership Order, the Receiver understands that Rana engaged in the following transactions:
 - a) Rana sold a cottage property located 428 Robins Point Road, Tay, Ontario to his children Subeet Randhawa and Nimrat Randhawa. A copy of the parcel register for the cottage property is attached as Appendix "A". The transfer was recorded on June 4, 2021;
 - b) on June 4, 2021, Rana sold a residence in Florida (the "Florida Property") to Sandeep Randhawa and Ashleen Randhawa for \$150,000. Attached as Appendix "B" is a copy of the warranty deed reflecting the sale (which is dated June 4, 2021 but signed as of June 1, 2021). Attached as Appendix "C" is a copy of the Charlotte County Property Appraiser - Real Property Record Card which shows the transaction was registered on June 4, 2021 for \$150,000. During Rana's examination, he advised the Receiver that Sandeep Randhawa is a family friend. The Receiver understands that the Florida Property was initially listed for sale for \$480,000 in 2020. Attached as Appendix "D" is a copy of the listing reflecting the offering price from 2020; and
 - c) Rana guaranteed the Georgetown Mortgage obtained by his wife, Sukhdeep, on the family home.

4. On Monday, August 16, 2021, Stikeman Elliott LLP (“Stikemans”), counsel to Paul, wrote to Lenczner Slaght LLP (“Lenczner”), counsel to Rana, advising that Rana had disposed of the properties above and an additional Florida property, and that during June 2021, Rana’s residence, the Georgetown Property, was listed for sale. In the letter, Paul advised that he was concerned that Rana was attempting to divert his assets, and potentially assets of RGC, with the intent to defeat, hinder, delay or defraud Paul or RGC from any personal exposure that Rana may have in connection with the matters currently under investigation. Paul further requested that Rana provide 30 days’ notice of any sale of the residence and an undertaking not to transfer any proceeds from the jurisdiction. A copy of this letter is attached as Appendix “E”.
5. On August 17, 2021, Lenczner responded that the allegations were serious and that it was unaware of any information that suggested RGC property improperly flowed to the Georgetown Property. A copy of this letter is attached as Appendix “F”.
6. That same day, counsel to Paul responded asking for confirmation that Rana would refuse to give an undertaking not to sell the Georgetown Property. A copy of this email is attached as Appendix “G”.
7. On August 18, 2021, counsel to Paul and counsel to Rana had a further email exchange in which counsel to Rana advised that the Georgetown Property was owned by Rana’s wife and that the family had no plans to list the home. Counsel to Paul responded by providing a PDF showing Facebook and Instagram advertisements for the Georgetown Property. A copy of the email exchange is attached as Appendix “H”.
8. At his examination, Rana advised that his wife had listed the Georgetown Property but had decided not to sell the home and to remove the listing.
9. On August 24, 2021, following Rana’s examination, the Receiver identified an additional advertisement for the Georgetown Property. On August 25, the real estate agent confirmed by phone to a legal assistant at Cassels Brock & Blackwell LLP, counsel to the Receiver, that the home was available for sale. A copy of the affidavit of Behnoosh Nasri is attached as Appendix “I”.
10. Following a further exchange of emails with Rana’s counsel, the real estate agent confirmed in writing that the Georgetown Property was no longer for sale. A copy of the August 25, 2021 email from the real estate agent to counsel to the Receiver and counsel to Rana is attached as Appendix “J”. The following day, the agent confirmed by telephone to the Receiver’s counsel that she was no longer authorised to sell the home, but that she had left the listing active on her website to attract business.
11. In an effort to resolve this matter without the Court’s assistance, the Receiver and Lenczner negotiated a consent order that if issued by the Court would provide the relief sought in Section 1.1.1 (b) (i) and (ii) of the Supplement Report. As a condition to the consent order, the Receiver required that Rana disclose the uses of the proceeds from the Georgetown Mortgage, which he has guaranteed. A copy of the Charge is attached as Appendix “K”. The Receiver’s counsel repeatedly requested this information as a condition to the agreement on the consent order. On September 12, 2021, Lenczner advised that Rana “advises that as a result of martial strife, he is unable to obtain the information sought with respect to mortgage proceeds”. A copy of the email chain is attached as Appendix “L”.

12. The Receiver is concerned that Rana is unaware of the use of the proceeds of a \$2.4 million loan which he has personally guaranteed and that he is attempting to make himself "judgment proof". As the Receiver's investigation is ongoing and may result in a recommendation for the commencement of actions against Rana, the Receiver believes that it is appropriate to limit Rana's ability to transfer his property, and that the order sought is therefore necessary to maintain the status quo. The Receiver requires information regarding how the Georgetown Mortgage proceeds were spent as it is concerned that Rana has taken or may take steps to conceal his assets.
13. The Receiver intends to provide its report on the investigation shortly, which may further inform the parties' next steps on these matters.

3.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief sought in paragraph 1.1(1)(b) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
RGC
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

SWINDERPAL SINGH RANDHAWA

and

RANA PARTAP SINGH RANDHAWA et al.

Applicant

Respondents

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

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

PROCEEDING COMMENCED AT
TORONTO

**SUPPLEMENT TO FOURTH REPORT OF KSV
RESTRUCTURING INC.
AS RECEIVER**

Cassels Brock & Blackwell LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Natalie E. Levine LSO #: 64908K

Tel: 416.860.6568
Fax: 416.640.3207
nlevine@cassels.com

John M. Picone LSO #: 58406N

Tel: 416.640.6041
Fax: 416.350.6924
jpicone@cassels.com

Kieran May LSO #: 79672P

Tel: 416.869.5321
Fax: 416.350.6958
kmay@cassels.com

Lawyers for KSV Restructuring Inc. in its capacity as
Receiver

Appendix “F”

Nasri, Behnoosh

From: Xcent Lawyers <info@xcentlawyers.ca>
Sent: Monday, October 04, 2021 12:39 PM
To: Noah Goldstein
Cc: Levine, Natalie; Picone, John M.; May, Kieran
Subject: Re: Randhawa v. Randhawa, CV-18-593636--00CL

Hi Natalie,

Further to your email of yesterday, I was and am occupied in court hearings today and wasn't able to respond.

Furthermore, below was your response on confidentiality (your email of September 23, 2021):

"On your question about confidentiality, I have discussed with the Receiver. We can agree that to the extent we have questions or require additional information, we will come to you first, before asking anyone else to help us understand the transactions. If the Receiver is not satisfied with the answer from your client, we will ask others for assistance. We may also need to include certain of the information in our report to the court, consistent with our investigation mandate."

On the basis of the above, my client provided the information. I understand that you still require further information and the same will be provided to the Receiver's satisfaction.

I further understand that the Receiver has now changed its position with respect to confidentiality and below is what you have advised me now:

"We have asked to share the information with the other party to maintain the balance of information flowing the Receiver."

My client shall be willing to share the information with her spouse's counsel if a request is made during prospective family court proceedings.

With respect to the concerns, which my client has against sharing my client's financial information with the Applicant:

My client has advised me that the Applicant along with his brother and others, took possession of properties belonging to her in India and the criminal proceedings and cases are also pending against the Applicant and his brother. My client has still not been able to get access to her personal belongings and her property documents from the Applicant in India. The Applicant has already misused her personal belongings and property documents in India. Besides that, the Applicant along with his other brother in India hid from my client the notices from tax authorities, which resulted in huge tax penalties, tax consequences and proceedings. I have asked my client to provide copies of the proceedings and I will forward the same if necessary and required by the court.

Further, my client is not a party to any proceedings and based on the above, my client is concerned that her financial information may be abused by the Applicant and his brother.

Please advise how my client's above concerns will be reconciled, should the information is shared with the Applicant

As advised earlier, I will be in the Court hearing shortly and would respond as soon as I am able to.

Also, I will call you later today to understand the nature of missing information so that it is provided to your satisfaction and without any need for examinations which will be a wasteful use of resources.

I look forward to hearing from you.

Yours truly,

Napinder Masaun

Xcent Lawyers Professional Corporation

WE HAVE MOVED TO NEW LOCATION

Suite 202, 7895 Tranmere Drive,
Mississauga, Ontario L5 S 1V9.

P: 647-982-0000

F: 1-905-495-7703

Email: Info@xcentlawyers.ca

www.Xcentlawyers.ca

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WARNING: From time to time, our spam scanners eliminate legitimate emails from clients. If your email contains important instructions, please ensure that we acknowledge receipt of those instructions.

COVID-19 UPDATE

In an attempt to ensure the health and safety of our staff and clients, appointments will be held by electronic means where possible. If you have an in-person appointment scheduled, we would kindly ask that you advise our office in advance if you have traveled recently or if you are experiencing any symptoms of illness, so that alternate arrangements may be made by our office.

We thank you for your co-operation

On Sun, Oct 3, 2021 at 7:34 PM Noah Goldstein <ngoldstein@ksvadvisory.com> wrote:

Napinder, we need you to please respond to these emails on a timely basis.

Noah Goldstein
416.844.4842

On Oct 3, 2021, at 10:06 AM, Levine, Natalie <nlevine@cassels.com> wrote:

Napinder-

This is disappointing. We had hoped to avoid having a hearing on this issue. We have asked to share the information with two parties. Ms Randhawa's husband has guaranteed the mortgage and he should know where the funds have gone. Justice Koehnen has already made findings on this point. We have asked to share the information with the other party to maintain the balance of information flowing the Receiver. It remains unclear why your client would oppose this request. This issue should not require us to use the Court's time. We will be seeking costs against your client in connection with this motion.

The Court has asked us to provide all available times within a very short window. Please provide us with your full availability for the next two weeks so that we obtain a time from the Court. We will have to write to Justice Koehnen and ask for time. He starts responding to emails early in the morning so we should email him no later than 9 am tomorrow with a full list of times.

We also have not heard from you on whether you and your client wish to meet with us on an informal basis to avoid the need for an examination. We will prepare a notice of examination and deliver it so that we can set a date, but if you are willing to explain the documents on Monday afternoon and we can get satisfactory answers, we can cancel the examination. Again, your client was obligated to provide information within 3 days of the Court order—a date that has long since passed. We do not understand the information that has been provided and we will address this with the Court if we cannot resolve it.

I encourage you to consider this with your client and get back to us today.

Thanks

Natalie

Cassels

NATALIE E LEVINE *(she/her/hers)*

t: +1 416 860 6568

e: nlevine@cassels.com

Cassels Brock & Blackwell LLP | cassels.com

Suite 2100, Scotia Plaza, 40 King St. W.

Toronto, ON Canada M5H 3C2 Canada

Services provided through a professional corporation

From: Xcent Lawyers <info@xcentlawyers.ca>

Sent: Saturday, October 02, 2021 7:02 PM

To: Levine, Natalie <nlevine@cassels.com>

Subject: Re: Randhawa v. Randhawa, CV-18-593636--00CL

I would request to schedule the hearing for October 13 2021 If everyone is available.

Napinder Masaun

On Sat, Oct 2, 2021 at 12:45 PM Levine, Natalie <nlevine@cassels.com> wrote:

Napinder can we please hear from you today.

Sent from my iPhone

On Oct 1, 2021, at 11:07 AM, Levine, Natalie <nlevine@cassels.com> wrote:

Hi Napinder –

Continuing on the theme of productive discussions, I've spoken to the Receiver about the examination. We do not want to waste anyone's time or money with an examination if at all possible. Can we set up a call on Monday afternoon for you and your client to walk us through the transfers? We can do it by zoom so that we can all look at the same documents and we can explain what we are struggling with. We will only schedule an examination if we cannot fully understand the information through our discussions.

Thanks.

Natalie

<image001.png>

NATALIE E LEVINE *(she/her/hers)*

t: +1 416 860 6568

e: nlevine@cassels.com

Cassels Brock & Blackwell LLP | cassels.com

Suite 2100, Scotia Plaza, [40 King St. W.](#)

[Toronto, ON Canada M5H 3C2](#) Canada

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From: Picone, John M. <jpicone@cassels.com>
Sent: Friday, October 01, 2021 10:33 AM
To: info@xcentlawyers.ca
Cc: Levine, Natalie <nlevine@cassels.com>; Goodis, Ben <bgoodis@cassels.com>;
May, Kieran <kmay@cassels.com>
Subject: FW: Randhawa v. Randhawa, CV-18-593636--00CL

Napinder,

Thanks again for the productive discussion this morning.

Please see the e-mail endorsement of Mr. Justice Koehnen below and His Honour's attached order. As I mentioned during our call, Mr. Justice Koehnen expects factums to be filed if the matter of confidentiality is to be argued on October 6th at 11:00 a.m.

We look forward to hearing from you about your client's position, hopefully today.

John

<image001.png>

JOHN M. PICONE *(he/him/his)*

t: +1 416 640 6041

e: jpicone@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
Suite 2100, Scotia Plaza, [40 King St. W.](http://40KingStW.com)
[Toronto, ON M5H 3C2 Canada](http://Toronto.ON.M5H3C2Canada.com)

From: Koehnen, Mr. Justice Markus (SCJ) <Markus.Koehnen@scj-csj.ca>
Sent: Friday, October 01, 2021 10:26 AM
To: May, Kieran <kmay@cassels.com>; Levine, Natalie <nlevine@cassels.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Jonathan Joffe <jjoffe@ksvadvisory.com>; akreaden@stikeman.com;
Sam Dukesz <sdukesz@stikeman.com>; Shara Roy <sroy@litigate.com>; Lauren Mills Taylor <lmillstaylor@litigate.com>; JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>; Picone, John M. <jpicone@cassels.com>; Goodis, Ben <bgoodis@cassels.com>
Subject: RE: Randhawa v. Randhawa, CV-18-593636--00CL

Email Endorsement

1. I have attached a signed order at the request of the Investigatory Receiver authorizing the investigation and valuation of certain claims. The view appears to be that valuing the claims may assist in there settlement and an overall lowering of professional fees than the reverse.
2. Counsel for the Receiver also advises that Rana's spouse has provided certain information but has asked that the information be held in confidence by the Receiver. The Receiver is of the view that both Rana and Paul should be aware of the information. I am not prepared to address that issue without giving Rana's spouse the opportunity to explain her concerns.
3. A motion has been scheduled for 11 AM on October 6, 2021 to address certain relief that Mr. Kreaden seeks. Receiver's counsel should advise the counsel for Rana's spouse that he should appear on October 6 either to make arguments on the confidentiality point or to set a schedule to have that point addressed. To the extend that the issue cannot be addressed on October 6, the schedule will be one that sees the issue addressed in the very short term. The question is one that calls for a speedy, practical solution, not a lengthy, drawn out process.

Justice Markus Koehnen

Ontario Superior Court of Justice

[361 University Ave.](#)

[Toronto, Ont.](#)

[M5G 1T3](#)

416-327-5284

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COVID-19 UPDATE

In an attempt to ensure the health and safety of our staff and clients, appointments will be held by electronic means where possible. If you have an in-person appointment scheduled, we would kindly ask that you advise our office in advance if you have traveled recently or if you are experiencing any symptoms of illness, so that alternate arrangements may be made by our office.

We thank you for your co-operation

Appendix “G”

From: Bart Sarsh <SarshB@simpsonwigle.com>
Sent: Wednesday, February 5, 2020 9:25 AM
To: Aaron Kreaden <AKreaden@stikeman.com>
Cc: Rosemary A. Fisher <FisherR@simpsonwigle.com>; Tracey Hepburn <thehepburn@simpsonwigle.com>
Subject: RE: Randhawa - Notice of Access Under Revised Access Protocol

Aaron,

I confirm that Harbhajan accompanied Rama to the Family Home at approximately 10:30 am local time in India on February 5, 2020 to retrieve Rana's personal property in Rana's portion of the Family Home and that Harbhajan departed at approximately 11:45 am local time in India. We understand that this visit proceeded without incident.

Bart Sarsh
Partner



SimpsonWigle LAW LLP
103 – 1006 Skyview Drive,
Burlington, ON, L7P 0V1

Phone: 905-639-1052 ext 235
Fax: 905-528-9008

E-mail: SarshB@simpsonwigle.com
Website: <http://www.simpsonwigle.com>

From: Aaron Kreaden <AKreaden@stikeman.com>
Sent: February 3, 2020 12:21 PM
To: Bart Sarsh <SarshB@simpsonwigle.com>

Cc: Rosemary A. Fisher <FisherR@simpsonwigle.com>; Tracey Hepburn <theburn@simpsonwigle.com>

Subject: RE: Randhawa - Notice of Access Under Revised Access Protocol

Received, thank you.

Aaron Kreaden

Direct: +1 416 869 5565

Email: akreaden@stikeman.com

Stikeman Elliott

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Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

This email is confidential and may contain privileged information. If you are not an intended recipient, please delete this email and notify us immediately. Any unauthorized use or disclosure is prohibited.

From: Bart Sarsh <SarshB@simpsonwigle.com>

Sent: Monday, February 03, 2020 12:21 PM

To: Aaron Kreaden <AKreaden@stikeman.com>

Cc: Rosemary A. Fisher <FisherR@simpsonwigle.com>; Tracey Hepburn <theburn@simpsonwigle.com>

Subject: Randhawa - Notice of Access Under Revised Access Protocol

Aaron,

This is notice under paragraph 1(c) of the consent Revised Access Protocol that Harbhajan will be arriving at the Family Home between 9am – 12 pm on local India time on Wednesday, February 5, 2020.

Please ensure that the steps reference din paragraph 1(a) are completed.

Bart Sarsh

Partner



SimpsonWigle LAW LLP
103 – 1006 Skyview Drive,
Burlington, ON, L7P 0V1

Phone: 905-639-1052 ext 235

Fax: 905-528-9008

E-mail: SarshB@simpsonwigle.com

Website: <http://www.simpsonwigle.com>

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Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada

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SWINDERPAL SINGH RANDHAWA

and

RANA PARTAP SINGH RANDHAWA et al.

Applicant

Respondents

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

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

PROCEEDING COMMENCED AT
TORONTO

**SIXTH REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER**

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Lawyers for KSV Restructuring Inc. in its capacity as
Receiver