Court File No. CV-25-00749775-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

NATIONAL BANK OF CANADA

Applicant

- and -

DROP TECHNOLOGIES INC. (FORMERLY KNOWN AS DROP LOYALTY INC.), DROP TECHNOLOGIES USA INC., AND DROP TECHNOLOGIES HOLDINGS ULC

Respondents

APPLICATION UNDER SUBSECTIONS 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

FACTUM OF THE APPLICANT AND THE PROPOSED RECEIVER

August 26, 2025

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PART I – OVERVIEW

1. Drop Technologies Inc. (formerly known as Drop Loyalty Inc.), ("**Drop**"), Drop Technologies USA Inc. ("**Drop USA")** and Drop Technologies Holdings ULC ("**Drop ULC**", and together with Drop and Drop USA, the "**Debtors**") operate a consumer loyalty rewards technology business (the "**Business**").

2. The Debtors have defaulted on the payment of their obligations to National Bank of Canada ("**NBC**"). NBC has brought an application to appoint KSV Restructuring Inc. ("**KSV**") as receiver and manager over the assets, properties and undertakings of the Debtors (collectively, the "**Property**").

3. The proposed receiver, KSV, also seeks the approval of a sales and marketing process to market the Debtor's Property and Business.

PART II – FACTS

a) Background

4. Drop is a corporation organized under the laws of Canada. Derrick Fung ("**Derrick**") is one of the directors listed on the profile.[1]

5. Drop USA is a corporation organized in Delaware. Derrick is listed as president and director of Drop USA.[2]

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[1] Karkoutlian Affidavit at para 3, and Exhibit "A", Drop Corporate Profile. w
[2] Karkoutlian Affidavit at para 4, and Exhibit "B", Drop USA Annual Report.

6. Drop ULC is a corporation organized under the laws of Alberta. Derrick is listed as a director of Drop ULC. The profile describes Drop Technologies Inc. as holding 100% of the voting shares of Drop ULC.[3]

7. The Business largely operates under the name "Drop" - a loyalty rewards technology provider. The Debtors' three main lines of Business are:

   (a) **Drop Mobile App:** Drop operates a mobile application that tracks consumers debit and credit card purchases made with specific vendors and provides Drop points to consumers based on this spending. Drop points are either funded by external vendors/brands or by the Company itself. When consumers reach certain point thresholds, they are able to redeem points for rewards (referred to as "**Card-linked Offers**" or "**CLOs**"). Drop earns revenue from the sale of "Drop points", which are points or reward units issued to their users on behalf of consumer merchants;

   (b) **Data revenue**: Drop collects debit and credit transactional data from its mobile application and through an arrangement with a US based consumer financial services company. This data collected provides visibility into consumer spending habits. It sells this data to various users, including hedge funds, investment banks, consulting firms and others. The data is sold as a service or piecemeal; and

   (c) **Channel partnerships:** Drop provides white label targeted CLO services to customers of its channel partners (including financial institutions and/or credit card networks). Drop places campaigns with its channel partners who publish the CLOs

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[3] Karkoutlian Affidavit at para 5, and Exhibit "C", Drop ULC Corporate Profile.

to their clients. Drop earns a percentage commission on total merchant budget dollars spent through the marketing campaign which is shared with the channel partners.[4]

8. NBC understands that Drop has other business lines called "Cardify" and "Signals". Cardify describes itself as "a leader in card-linked offers, driving over $1 billion in annual sales for top brands and retailers by influencing online and offline spending."

9. Based on the description on its own website, Signals offers analytics regarding consumer spending trends. It describes itself as a platform powered by "$70 billion in consumer spend data" and that "this data is engineered to predict emerging trends in the stock market before they occur, empowering traders to make more accurate and strategic decisions."[5]

10. Pursuant to the IP Pledge (as defined below), the domain names "cardifyinternal.com" and "cardify.ai" are pledged to NBC.[6]

b) Loans to the Debtors and Related Security

11. Drop Loyalty Inc. originally entered into a Loan and Security Agreement (the "**LSA**") dated September 14, 2017, with Silicon Valley Bank ("**SVB**").[7] The LSA was amended as follows:

(a) By way of a First Amendment to Loan and Security Agreement dated January 31, 2018;

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[4] Karkoutlian Affidavit at paras 7-8, Exhibits "D" and "E", Screenshots from Drop's website and LinkedIn page.
[5] Karkoutlian Affidavit at para 31, Exhibit "YY", Screenshots from Signals website.
[6] Karkoutlian Affidavit at para 32.
[7] Karkoutlian Affidavit at para 9, Exhibit "F", LSA.

(b) By way of a Joinder and Second Amendment to Loan and Security Agreement dated September 13, 2019, in which Drop USA was added as a borrower to the LSA;

(c) By way of a Third Amendment to Loan and Security Agreement dated December 8, 2020**;**

(d) By way of a Waiver and Fourth Amendment to Loan and Security Agreement dated September 27, 2021**;**

(e) By way of a Joinder and Fifth Amendment to Loan and Security Agreement dated January 12, 2022, in which Drop ULC was added as a borrower to the LSA;

(f) By way of a letter amending agreement dated January 27, 2022 and a deferral agreement dated April 7, 2020;

(g) By way of a Sixth Amendment to Loan and Security Agreement dated June 30, 2022;

(h) By way of a Forbearance and Seventh Amendment to the Loan and Security Agreement dated May 8, 2024;

(i) By way of an Eighth Amendment to the Loan and Security Agreement dated May 28, 2024; and

(j) By way of a Ninth Amendment to the Loan and Security Agreement dated December 20, 2024 (collectively, as amended, the "**Loan Agreement**").[8]

[8] Karkoutlian Affidavit, Exhibits "G", "H" "I", "J", "K", "L", "M", "N", "O" and "P", Amendments to the LSA.

12. In April 2023, NBC acquired SVB's Canadian portfolio of loans. As part of this acquisition, NBC acquired the loans that SVB had made to the Debtors.[9]

13. Section 4.1 of the Loan Agreement grants a security interest in favour of NBC by each of the Debtors. As described below, the security interest was perfected by registration made under the *Personal Property Security Act* (Ontario) (the "**PPSA**").

14. NBC also obtained a pledge of the Debtors' intellectual property (the "**IP Pledge**"). As described below, NBC amended its PPSA registration in Ontario, which had initially excluded intellectual property from the collateral pledged by Drop. The registration was amended to include all of Drop's Present and After-Acquired personal property.[10]

c) Summary of PPSA Searches and Other Creditors

i) PPSA Registrations made against Drop

15. The following is a summary of parties with registrations against Drop pursuant to the *Personal Property Security Act* (Ontario).

PPSA Registrations (Ontario) against Drop Technologies Inc.					
No.	**Creditor**	**Reg #**	**Reference File No.**	**Reg. Date**	**Collateral Classification**
1.	Royal Bank of Canada	20161212 1437 1530 2745 against Drop Loyalty Inc. Amended by 20180209 1432 1530 3642 to add Drop Technologies Inc as a debtor	723317976	Dec. 12, 2016	A,O

[9] Karkoutlian Affidavit at para 11.
[10] Karkoutlian Affidavit at para 13, Exhibits "Q" and "R", Intellectual Property Pledge and Registration of Pledge.

PPSA Registrations (Ontario) against Drop Technologies Inc.					
No.	**Creditor**	**Reg #**	**Reference File No.**	**Reg. Date**	**Collateral Classification**
		Renewed by Registration 20211120900 1532 5883 for a period of 5 years			
2.	Silicon Valley Bank and assigned to National Bank of Canada	20170518 1237 1793 5682 as against Drop Loyalty Inc. Amended by Registration 20170802 1738 9012 to change the debtor's address Amended by Registration 20180109 1256 1793 5675 to change the name of the debtor to Drop Technologies Inc. Renewed by Registration 20190729 1443 1793 7625 for a period of 3 years Renewed by Registration 20211231 1419 6083 4220 for a period of 5 years Assigned from Silicon Valley Bank to National Bank of Canada by Registration 20230912 1103 9234 0118 Amended by Registration 20240603 1251 1793 2480 to amended and restate the general collateral description to "All Present and After-Acquired personal Property of the debtor". Amended by Registration 20250228 0803 1793 6830 to update the secured party's address	72w7789023	May 18, 2017	I, E, A, O, MV
3.	Silicon Valley Bank assigned to National	20180124 0929 1793 6240 with the general collateral description excluding Intellectual Property	735899418	January 24, 2018	I, E, A, O & MV

PPSA Registrations (Ontario) against Drop Technologies Inc.					
No.	**Creditor**	**Reg #**	**Reference File No.**	**Reg. Date**	**Collateral Classification**
	Bank of Canada	Renewed by Registration 20190729 1442 1793 7624 for a period of 2 years Renewed by Registration 20220829 1234 5064 1025 for a period of 5 years Assigned from Silicon Valley Bank to National Bank of Canada by Registration 20230830 1005 9234 9760 Amended by Registration 20240603 1252 1793 2481 to restate the general collateral description to "All Present and After-Acquired personal Property of the debtor". Amended by Registration 20250228 0803 1793 6831 to update the secured party's address			
4.	Royal Bank of Canada	20180212 1933 1531 0561 Amended by Registration 20220120 1703 1532 0938 to change debtor address to Suite 200-120 Front St. East, Toronto, ON Canada M5A 4L9 Renewed by Registration 20230113 0825 1532 5011 for a period of 5 years	736427988	February 12, 2018	A & O
5.	Royal Bank of Canada	20180220 1934 1531 2898 with general collateral description: Priority Agreement dated February 8, 2018 between Silicon Valley Bank and Royal Bank of Canada, in favour of Security Agreement between Royal Bank	736601688	February 20, 2018	O

PPSA Registrations (Ontario) against Drop Technologies Inc.					
No.	**Creditor**	**Reg #**	**Reference File No.**	**Reg. Date**	**Collateral Classification**
		of Canada and Drop Technologies Inc. Renewed by Registration 20230127 0819 1532 8494 for a period of 5 years			
6.	Silicon Valley Bank	20190729 1441 1793 7623 with the general collateral description exempting intellectual property. Assigned by Registration 20190827 1450 1793 9162 to remove the general collateral description Assigned by Registration 20230912 1104 9234 0119 from Silicon Valley Bank to National Bank of Canada Amended by 20250228 0804 1793 6832 to update secured party's address Renewed by Registration 20250228 1005 1462 2395	753839379	July 29, 2019	I, E, A, O, MV
7.	Silicon Valley Bank	2021126 1722 1793 6876 Assigned by Registration 20230830 1027 9234 9782 from Silicon Valley Bank to National Bank of Canada Amended by 20250228 0805 1793 6833 to update secured party address	778561506	Nov. 26, 2021	I,E,A,O, MV
8.	Kensington (Parallel) Venture Fund II, L.P.	20240607 1740 1590 5675	506188899	June 7, 2024	I,E,A,O, MV

PPSA Registrations (Ontario) against Drop Technologies Inc.					
No.	**Creditor**	**Reg #**	**Reference File No.**	**Reg. Date**	**Collateral Classification**
9.	Drop Direct, LLC	20240607 1740 1590 5674	506188872	June 7, 2024	I,E,A,O, MV
10.	Broader Media Holdings, LLC	20240607 1739 1590 5673	506188845	June 7, 2024	I,E,A,O, MV
11.	Synchrony Financial	20240607 1739 1590 5672	506188836	June 7, 2024	I,E,A,O, MV
12.	FF Saphire Opportunity Fund II, LLC	20240607 1739 1590 5671	506188818	June 7, 2024	I,E,A,O, MV
13.	Sierra Ventures XI, L.P.	20240607 1738 1590 5670	506188791	June 7, 2024	I,E,A,O, MV
14.	Kensington Private Equity Fund	20240607 1738 1590 5669	506188773	June 7, 2024	I,E,A,O, MV
15.	Rogue Insight Capital Ltd.	20240607 1737 1590 5668	506188764	June 7, 2024	I,E,A,O, MV
16.	Royal Bank of Canada	20240607 1737 1590 5667	506188755	June 7, 2024	I,E,A,O, MV
17.	Kensington Ventures Fund II, L.P.	20240607 1737 1590 5666	506188746	June 7, 2024	I,E,A,O, MV
18.	New Enterprises Associates 16, L.P.	20240607 1736 1590 5665	506188737	June 7, 2024	I,E,A,O, MV

16. In addition to the registrations above, there were only two registrations made against the former name of Drop, being Drop Loyalty Inc., in Ontario, being Royal Bank of Canada ("**RBC**") and SVB.[11]

[11] Karkoutlian Affidavit at para 21, Exhibit "PP", PPSA Search against Drop Loyalty.

17. With respect to the registration made by Royal Bank of Canada ("**RBC**"), SVB and RBC entered into a priority agreement in which SVB agreed to postpone its interest to the extent of any cash collateral held with RBC.[12]

18. SVB entered into subordination agreements with certain parties, being Rogue Insight Capital Ltd., New Enterprise Associates 16 L.P., Drop Direct, LLC, and HOF Capital CGI Fund (Cayman), LP.[13] NBC is also aware of certain promissory notes entered into by Drop with Rogue Insight Capital Inc and Drop Direct LLC.[14] SVB had also entered into a consent agreement dated June 22, 2023 in respect of certain subordinated debt.[15]

19. Further, for each of the registrants listed in the above chart, NBC entered into subordination agreements such that NBC has priority over each of the creditors, including in respect of any intellectual property as defined in the IP Pledge.[16]

20. There are no registrations against Drop, or under the former name of Drop (being Drop Loyalty Inc.) under the *Personal Property Security Act* (Alberta).[17] There are no Uniform Commercial Coe filings against Drop or under the former name of Drop (being Drop Loyalty Inc.) in New York or Delaware.[18]

ii) Drop ULC

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[12] Karkoutlian Affidavit at para 15, Exhibit "T".
[13] Karkoutlian Affidavit at para 16, Exhibits "V", "W" , "X" and "Y", Copies of Subordination Agreements.
[14] Karkoutlian Affidavit at para 17, Exhibits "Z" and "AA", Promissory Notes.
[15] Karkoutlian Affidavit at para 17, Exhibit "BB", Subordinated Debt Agreement.
[16] Karkoutlian Affidavit at para 18, Exhibits "CC", "DD", "EE", "FF", "GG", "HH", "II", "JJ"., "KK"., "LL", and "MM", Copies of Subordination Agreements.
[17] Karkoutlian Affidavit at para 19, Exhibit "NN", PPSA Search.
[18] Karkoutlian Affidavit at para 20, Exhibit "OO", New York and Delaware Searches.

21. NBC also made a registration against Drop ULC under the *Personal Property Security Act* in both Ontario and Alberta. With respect to both registrations, the registration was made by SVB and then assigned to NBC.[19] There are no other registrations against Drop ULC in these jurisdictions.

iii) Drop USA

22. NBC made a registration as against Drop USA under the *Personal Property Security Act* (Ontario) and pursuant to the Uniform Commercial Act in Delaware. With respect to both registrations, the registration was made by SVB and then assigned to NBC. There was also a registration made by First-Citizens Bank & Trust Company, which was also assigned to NBC. There are no other registrations against Drop USA in these jurisdictions. [20]

23. There are no other registrations against Drop USA in Alberta's PPSA regime or pursuant to the Uniform Commercial Code in New York.[21]

iv) Writ Searches

24. There are no writs registered against any of Drop USA, Drop ULC, or Drop in Ontario.[22]

v) Canada Revenue Agency

25. Drop also signed a notice of assignment and direction, authorizing the Canada Revenue Agency to pay amounts from various tax refunds due to Drop, as detailed in the notice, to SVB.[23]

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[19] Karkoutlian Affidavit at paras 22-23, Exhibit "QQ" and "RR", Alberta and Ontario searches.
[20] Karkoutlian Affidavit at paras 24-26, Exhibit "SS" and "UU", Delware and Ontario searches.
[21] Karkoutlian Affidavit at paras 24-26, Exhibit "TT" and "UU", Alberta and New York searches.
[22] Karkoutlian Affidavit at para 27, Exhibit "VV", Writ Searches.
[23] Karkoutlian Affidavit at para 28, Exhibit "WW", Notice of Assignment and Direction.

D. Forbearance Period and Sales Process

26. Since May 2024, the Lender has accommodated the Debtors by establishing a forbearance period. The principal purpose was to permit the Debtors a time period to carry out a sales and marketing process such that the Indebtedness could be repaid in full.[24]

27. The Lender and its financial advisor, KSV Advisory Inc. ("**KSV**"), have engaged in numerous discussions with the Derrick Fung and representatives of the Debtors' Board of Directors on their proposed business plan and options to continue the Debtors' sale and marketing process as well as a proposed recapitalization process for the business.[25]

28. The Debtors retained Raymond James Ltd. ("**Raymond James**") as their investment banker for the purpose of marketing their business for sale. Notwithstanding the extensive efforts of Raymond James, which involved casting a wide net for purchasers across North America for well more than a year, no concrete binding offers have been submitted to acquire the Debtors' business and/or assets. The Raymond James process commenced in August 2024 and continues to today.[26]

29. Throughout the forbearance period, NBC granted the Debtors several accommodations, including deferring all payments of principal and substantially all payments of interest, legal and professional fees.[27]

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[24] Karkoutlian Affidavit at para 33.
[25] Karkoutlian Affidavit at para 34.
[26] Karkoutlian Affidavit at para 35.
[27] Karkoutlian Affidavit at para 37.

30. During the forbearance period, the Debtors were required to comply with reporting obligations, including providing NBC with a variance report on the 25th day of each month, comparing the budget to actual performance for the proceeding month. The Debtors were consistently late in complying with their reporting obligations. For example, in March of 2025, KSV had to follow up with the Debtors for the January 2025 variance report. In May of 2025, KSV had to follow up with the Debtors for the March reporting.[28]

31. Further, as part of their obligations under the forbearance agreement, the Debtors were required to move all of their bank accounts (other than a U.S. based account) to NBC. The Debtors have still failed to transfer all of their accounts to NBC.[29]

E. Expiry of Forbearance Period, Demands and Difficulties

32. The forbearance period expired on April 1, 2025. On March 28, 2025, NBC forwarded a copy of the Tenth Amendment to the LSA (the "**Forbearance Agreement**") to Derrick for his review and comments. NBC followed up on the status of the execution of the forbearance agreement with Derrick multiple times. The Debtors did not execute the Forbearance Agreement.[30]

33. On May 9, 2025, NBC advised Derrick that due to the Debtors' failure to close a sales transaction and given that there was no imminent closing of a sale transaction, that during the proposed 90 day period forbearance extension, NBC would require the Debtors to secure capital injections on a monthly basis equivalent to the decline in the Company's cash position

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[28] Karkoutlian Affidavit at para 37.
[29] Karkoutlian Affidavit at para 38.
[30] Karkoutlian Affidavit at para 34.

as of April 30, 2025. Further, the Debtors would be required to pay regularly scheduled monthly interest payments during the 90-day extension period.[31]

34. On May 21, 2025, NBC proceeded to make a formal written demand on the Debtors for payment of the amounts owed to NBC under the credit facilities (the "**Demand Letters**"). Notices of intention to enforce security (the "**BIA Notices**") pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) accompanied the Demand Letters.[32]

35. As of May 21, 2025, the following amounts are owing by the Debtors to the Lender for principal and interest (together with costs (including, without limitation, legal fees and expenses) and accruing interest, the "**Indebtedness**"):[33]

	Principal	**Interest**	**Total**
Credit facility loan # 10078335	US$6,545,454.57	US$731,181.80	US$7,276,636.37
Professional Fees	CAD$140,322.65		CAD$140,322.65

36. On June 5, 2025, NBC's lawyers, Aird & Berlis LLP, sent a letter to the Debtors. The letter stated that the Debtors have not been able to demonstrate access to fresh capital to address continuing cash losses, and that NBC understood from Derrick that the Debtors were not prepared to inject any funds into the business. In its letter, NBC further requested that:

(a) The Debtors meet with the Lender's technology consultant to provide information regarding its technology, including the Cardify and Signals product lines.

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[31] Karkoutlian Affidavit at para 40, Exhibit "AAA".
[32] Karkoutlian Affidavit at para 42, Exhibit "BBB".
[33] Karkoutlian Affidavit at para 43.

(b) The Debtors consent to a court-supervised insolvency filing, which will contemplate a court-supervised sale or refinancing; and

(c) The Debtors and its employees shall cooperate with the Lender to facilitate a sale and/or refinancing of the Debtors' business.[34]

37. On June 5, Derrick advised NBC that the Debtor's cash flow had improved, and it could begin making a payment of $35,000 per month immediately, without a significant strain to the business. On June 16, 2025, Derrick advised NBC that it could begin making a payment of $50,000 per month commencing in July 2025. In accordance with the above, the Bank swept a sum of $40,000. [35]

38. On July 14, 2025, NBC sent Derrick an amended and restated forbearance agreement, an engagement letter for a technology audit, a consent to a proceeding under the BIA and CCAA, and a request that the Debtors provide an update to the intellectual property listing for the IP Pledge.[36]

39. The Debtors did not sign the Forbearance Agreement or the engagement letter. Despite NBC's request for a technology audit, the Debtors have not complied with this request. Further, they did not provide an updated listing of the Debtors' intellectual property.[37]

40. On August 15, 2025, Derrick sent NBC an update regarding the company's financial position. He advised that:

(a) Several key clients have notified of substantial budget cuts;

(b) Darren Fung, the CTO, has resigned from his role as of August 8th;

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[34] Karkoutlian Affidavit at para 44, Exhibit "CCC", Letter to the Debtors.
[35] Karkoutlian Affidavit at para 45, Exhibit "DDD", Email from Derrick.
[36] Karkoutlian Affidavit at para 46, Exhibit "EEE", Email from NBC to Derrick.
[37] Karkoutlian Affidavit at para 47.

(c) The head of Finance will transition to a part-time role as of August 12th for personal and financial reasons;

(d) One of its key channel partners notified the Debtors of a potential service shut-off unless an immediate payment of was made; and

(e) American Express cancelled the company's credit cards.[38]

41. In his email, Derrick acknowledged that they needed to act swiftly to preserve value for stakeholders, and options included flexibility by NBC on its requirement that monthly interest payments be made and raising equity through a crowdfund, or a controlled wind-down of the Debtors and transition into receivership.[39]

42. Based on current projections and Derrick's latest update, NBC is concerned that the Debtors will run out of liquidity in the very near future, and certainly no later than October of 2025.[40]

43. As a result, NBC seeks the appointment of KSV as a receiver and manager, for the principal purpose of carrying out a sale process.

PART III – ISSUES

44. The issues on this Application are whether:

(a) KSV should be appointed as Receiver; and

(b) The proposed sales process should be approved.

PART IV- LAW & ARGUMENT

A. The Court has Jurisdiction to Appoint a Receiver

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[38] Karkoutlian Affidavit at para 48, Exhibit "FFF", Email from Derrick.
[39] Karkoutlian Affidavit at para 49.
[40] Karkoutlian Affidavit at para 50.

45. This Court has jurisdiction to appoint a receiver. Subsection 243(1) of the BIA provides that, on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession over the assets of an insolvent person and exercise any control that the court deems advisable over that property and over the insolvent person's business, in circumstances where it is "*just or convenient*" to do so.[41] Similarly, the CJA enables the court to appoint a receiver where such appointment is "*just or convenient*".[42]

B. The Lender has Complied with Technical Requirements

46. The Lender has served the requisite notices pursuant to section 244 of the BIA. The prescribed 10 day notice period has expired. KSV has consented to act as receiver.[43]

47. Further, courts have recognized that where the secured creditor has enumerated rights to appoint a receiver, the burden on the applicant is relaxed.[44] In such cases, the remedy sought is merely the applicant enforcing the terms of an agreement between the parties.[45]

48. The Lender has the contractual right to appoint a Receiver. Pursuant to section 8.1, an event of default occurs when the Borrower fails to pay any obligations within 3 business days after such obligations are due and payable.[46]

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[41] *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3), s 243 [***BIA***].
[42] *Courts of Justice Act,* RSO 1990, c C. 43 at s 101 [***CJA***].
[43] Karkoutlian Affidavit at para 42 and para 62, Exhibit "GGG", KSV Consent.
[44] *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866 at para 27 and *iSpan Systems LP*, 2023 ONSC 6212 at para 31.
[45] *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866 at para 27 and *iSpan Systems LP*, 2023 ONSC 6212 at para 31.
[46] Karkoutlian Affidavit, Exhibit "F", LSA, section 8.1 and as further amended by the Fifth Amendment to the LSA, section 5.22.

49. Upon the occurrence of an event of default, pursuant to section 9.1(l), NBC may appoint a receiver and manager for all or any part of the collateral.[47]

50. There is a clear event of default. The amount of Indebtedness remains outstanding. Accordingly, the appointment of a receiver and manager in this case is not an extraordinary measure, as it is simply the result of enforcing the contractual terms to which the Debtors have already assented.

C. It is Just and Convenient to Appoint a Receiver

51. In determining whether it is "just or convenient" to appoint a receiver under either the BIA or the CJA, the court can take into account all of the circumstances, such as the costs, preservation of the security, and the relationship between the debtor and its creditors.[48]

52. As recently summarized by this Court in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, various factors are historically considered in determining whether a receiver should be appointed. The court laid out these factors as follows:

(a) whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;

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[47] Karkoutlian Affidavit, Exhibit "F", LSA, section 9.1(a).
[48] *Bank of Nova Scotia v. Freure Village on Clair Creek,* 1996 CanLII 8258 at para 10 and para 12 (ONSC). *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866 at para 26.

(b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;

(c) the nature of the property;

(d) the apprehended or actual waste of the debtor's assets;

(e) the preservation and protection of the property pending judicial resolution;

(f) the balance of convenience to the parties;

(g) the fact that the creditor has a right to appointment under the loan documentation;

(h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;

(i) the principle that the appointment of a receiver should be granted cautiously;

(j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;

(k) the effect of the order upon the parties;

(l) the conduct of the parties;

(m) the length of time that a receiver may be in place;

(n) the cost to the parties;

(o) the likelihood of maximizing return to the parties; and

(p) the goal of facilitating the duties of the receiver.[49]

53. It is not essential that the moving party establish, prior to the appointment of a receiver, that:

(a) It will suffer irreparable harm; or

(b) That the situation is urgent.[50]

54. A court-appointed receiver may also be appropriate, where the debtor's past conduct would suggest that efforts by a creditor to privately enforce its security will be delayed or otherwise fail.[51]

55. It is just and convenient in the circumstances to appoint a receiver. The Debtors have failed to repay the Indebtedness since the issuance of the demands, and they not provided NBC with a concrete plan to repay the amounts owing. Thus, the appointment of a receiver is just and convenient.

56. The appointment of a receiver is also in the best interest of all stakeholders. A receiver is necessary to preserve the value of the Debtors' remaining assets, safeguard any proceeds realized from enforcement efforts, and undertake an orderly sale of the Business and Property where possible. Accordingly, NBC respectfully submits that the appointment of

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[49] *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at para 25, citing *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.,* 2009 BCSC 1527 at para 25. See also *Re 2806401 Ontario Inc. o/a Allied Track Services Inc.*, 2022 ONSC 5509 at para 13.
[50] *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras 28-29. See also *Re 2806401 Ontario Inc. o/a Allied Track Services Inc.*, 2022 ONSC 5509 at para 15 and *C & K Mortgage et al. v. 11282751 Canada Inc. et al.*, 2024 ONSC 1039 at para 21.
[51] *C & K Mortgage et al. v. 11282751 Canada Inc. et al.*, 2024 ONSC 1039 at para 21.

KSV as receiver and manager of the Property and the Business is appropriate in the circumstances.

57. Finally, the appointment order contemplates that the receiver may retain legal counsel to represent and advise the receiver in connection with the exercise of the Receiver's powers and duties, including the Lender's counsel, Aird & Berlis LLP as long as there is no conflict of interest. The receiver is to retain independent lawyers in respect of any issue where a conflict exists or may exist. The Court routinely grants such orders in the context of receiverships.[52]

D. Approval of the Proposed Sales Process

58. The proposed receiver also seeks approval of the proposed Sale Process, the terms of which are further set out in the proposed form of order and in the pre-filing report of KSV, as proposed receiver. In particular, KSV intends to attempt to re-engage with parties that participated in the sales process run by Raymond James, and to identify and contact additional parties that may have an interest in the opportunity.[53]

59. The Sale Process contemplates that representatives of the Company may participate in the Sale Process. Participants in the Sale Process will be apprised of this possibility as these individuals may also be involved in management presentations to potential bidders. KSV, if appointed receiver, would attend all management presentations.[54]

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[52] See *e.g., MarshallZehr Group Inc. v. La Pue International Inc.,* Order (appointing receiver) at para 24, dated October 19, 2023, bearing Court File No. CV-23-00700695-00CL, Tab 1 of the Applicant's Compendium dated February 12, 2024 ("**Applicant's Compendium**") and *Care Lending Group Inc. v. 1000209217 Ontario Ltd.*, Order (appointing Receiver) at para 28 dated June 21, 2024, Court File No. CV-24-00000103-0000, Tab 2 of the Applicant's Compendium.
[53] Pre-Filing Report of the Proposed Receiver at para 5.0.2.
[54] Pre-Filing Report of the Proposed Receiver at para 5.0.4.

60. Given the Debtors' limited liquidity, offers for the Business and Property (or parts of it) are to be submitted approximately 30 days after launch of the Sale Process.

61. In *Royal Bank v. Soundair,* the Court of Appeal stated that the following factors must be considered when considering the approval of a proposed sale: (i) whether the Receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and, (iv) the interests of all parties.[55]

62. A court will consider the same factors in assessing a proposed sale process:

(a) the fairness, transparency and integrity of the proposed process;

(b) the commercial efficacy of the proposed process in light of the specific circumstances facing the Receiver; and

(c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale. [56]

63. A proposed sale process only has to be reasonable. It does not need to be perfect. In receiverships, courts will generally defer to a court-appointed receiver's business expertise in reviewing a sale and will not second-guess their recommendation absent exceptional circumstances.[57] Courts have further held it is not necessary to micro-manage every step of a proposed sale process.[58] Where a receiver has acted reasonably, prudently and not

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[55] *Royal Bank of Canada v. Soundair Corp*., 1991 CanLII 2727 (ON CA).
[56] *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at para 6.
[57] *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.,* 2021 ONCA 375 at para. 15 citing *Regal Constellation Hotel Ltd., Re.*, 2004 CanLII 206 (ONCA) at para. 23. See also *Ontario Securities Commission v. Bridging Finance Inc*., 2022 ONSC 1857 at paras. 43-45.
[58] *iSpan Systems LP*, 2023 ONSC 6212 at para 45.

arbitrarily, the court will not conduct a detailed review of each aspect of the procedure by which a receiver's decision was made with respect to a sale process.[59]

64. Each of foregoing factors are satisfied in respect of the proposed Sale Process:

(a) **Fairness, Transparency, and Integrity**: the Sale Process contemplated in the proposed form of order is fair, open and transparent. It sets out milestones, including a bid deadline. It is intended to involve both contacting target prospects and canvassing the market more broadly. It sets out what information the Receiver requires from prospective bidders. It will allow KSV, as receiver, to canvass the market broadly on an orderly but expedited basis to obtain the highest and best price in the circumstances;

(b) **Commercial Efficacy:** Raymond James has already conducted an extensive marketing process. KSV, as receiver, intends to attempt to re-engage with parties that have participated in the RJ Sale Process, and to identify and contact additional parties that may have an interest in the opportunity. KSV, is experienced running Court-supervised sale process as an officer of the Court, including as receiver. NBC also supports the terms of the Sales Process.

(c) **Value Maximization**: The duration of the proposed Sale Process is sufficient to allow interested parties to perform diligence and to submit offers.. The Receiver has the ability to run an auction if necessary. The Sale Process is flexible and will allow KSV to establish procedures it believes necessary to maximize value

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[59] *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, 2011 ONSC 4634 at para 43.

PART V – RELIEF SOUGHT

65. NBC and the proposed Receiver respectfully requests that this Court grant the aforementioned relief, and issue orders in the NBC's Application Record and the proposed Receiver's motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th of August, 2025.



Steven L. Graff / Adrienne Ho

SCHEDULE "A"
LIST OF AUTHORITIES

1. MarshallZehr Group Inc. v. La Pue International Inc., Order (appointing receiver) at para 24, dated October 19, 2023, bearing Court File No. CV-23-00700695-00CL
2. Care Lending Group Inc. v. 1000209217 Ontario Ltd., Order (appointing Receiver) at para 28 dated June 21, 2024, Court File No. CV-24-00000103-0000
3. *Royal Bank of Canada v. Soundair Corp*., 1991 CanLII 2727 (ON CA).
4. *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750.
5. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.,* 2021 ONCA 375
6. *Regal Constellation Hotel Ltd., Re.*, 2004 CanLII 206 (ONCA).
7. *Ontario Securities Commission v. Bridging Finance Inc*., 2022 ONSC 1857
8. *iSpan Systems LP*, 2023 ONSC 6212.
9. *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, 2011 ONSC 4634.
10. *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866
11. *Business Development Bank of Canada v 1673747 Ontario Inc*, 2013 ONSC 286
12. *Bank of Nova Scotia v. Freure Village on Clair Creek,* 1996 CanLII 8258
13. *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186
14. *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.,* 2009 BCSC 1527
15. *Re 2806401 Ontario Inc. o/a Allied Track Services Inc.*, 2022 ONSC 5509
16. *C & K Mortgage et al. v. 11282751 Canada Inc. et al*., 2024 ONSC 1039

Certificate of Authenticity

I, Adrienne Ho, am satisfied as to the authenticity of every authority cited in the factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O, 1990, Reg. 194.

26 – AUGUST– 2025 _____ _____

DATE Adrienne Ho

SCHEDULE "B"
RELEVANT STATUTES

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

PART XI

Secured Creditors and Receivers

Marginal note: Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- **(a)** the insolvent person consents to an earlier enforcement under subsection 244(2); or
- **(b)** the court considers it appropriate to appoint a receiver before then.

[….]

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

Interlocutory Orders

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

NATIONAL BANK OF CANADA - and - **DROP TECHNOLOGIES INC. et al.**

Applicant

Respondents
Court File No. CV-25-00749775-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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