

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE BANKRUPTCY OF PROEX LOGISTICS INC., GURU LOGISTICS
INC., 1542300 ONTARIO INC. AND 2221589 ONTARIO INC.**

MOTION RECORD

October 18, 2024

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Lawyers for KSV Restructuring Inc. in its capacity
as Trustee

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE BANKRUPTCY OF
PROEX LOGISTICS INC., GURU LOGISTICS INC., 1542300 ONTARIO INC. AND 2221589
ONTARIO INC.**

**SERVICE LIST
(as of September 23, 2024)**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE BANKRUPTCY OF PROEX LOGISTICS INC., GURU LOGISTICS INC., 1542300 ONTARIO INC. AND 2221589 ONTARIO INC.

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE BANKRUPTCY OF
PROEX LOGISTICS INC., GURU LOGISTICS INC., 1542300 ONTARIO INC. AND 221589
ONTARIO INC.**

**NOTICE OF MOTION
RETURNABLE NOVEMBER 27, 2024**

KSV Restructuring Inc. (“**KSV**”) in its capacity as trustee (the “**Trustee**”) of ProEx Logistics Inc. (“**ProEx**”), Guru Logistics Inc. (“**Guru**”), 1542300 Ontario Inc. (operated as ASR Transportation) (“**ASR**”) and 2221589 Ontario Inc. (“**222**”) (collectively, the “**Bankrupt Entities**”), will make a motion before Justice Penny on November 27, 2024 at 10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

- In writing under subrule 37.12.1(1) because it is;
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

at the following location: 330 University Avenue, Toronto, Ontario.

THE MOTION IS FOR

- (a) An order substantially in the form attached hereto as Schedule “A”, among other things:

- (i) substantively consolidating the estates of ProEx, Guru and ASR (the **“Trucking Business”**),
 - (ii) authorizing the Trustee to accept the claims by Swinderpal Singh Randhawa (**“Paul”**) against the Trucking Business, as an unsecured claim in the amount of \$117,693.40 and an equity claim in the amount of \$2,650,000;
 - (iii) authorizing the Trustee to make distributions of any surplus of proceeds from the Bankrupt Entities to Paul and Rana Partap Singh Randhawa (**“Rana”**) as shareholders of the Bankrupt Entities, subject to payment of the outstanding costs awards and the other orders of the Court;
 - (iv) approving the Trustee's reports filed in these proceedings; and
- (b) Such other and further relief as counsel may request and this Honorable Court deems just.

THE GROUNDS FOR THE MOTION ARE

Background

- (a) On October 23, 2023, the Ontario Superior Court of Justice (Commercial List) (the **“Court”**) granted an order in the ongoing RGC receivership proceedings under Court File No.: CV-18-593636-00CL (the **“Receivership Proceedings”**), authorizing KSV, in its capacity as receiver of the Bankrupt Entities and certain affiliates (collectively, **“RGC”**), to assign the Bankrupt Entities into bankruptcy in

accordance with the *Bankruptcy and Insolvency Act* (the “**BIA**”), and authorizing and empowering KSV to act as trustee in bankruptcy of the Bankrupt Entities.

- (b) On November 27, 2023, KSV filed the materials in respect of the assignments in bankruptcy on behalf of the Bankrupt Entities, and KSV was appointed as Trustee of the Bankrupt Entities by the Office of the Superintendent of Bankruptcy, which appointment was affirmed by the creditors of December 18, 2023 (the “**Bankruptcy Proceedings**”).
- (c) Following distributions to unsecured creditors, the remaining issues in the Bankruptcy Proceedings relate to the allocation of any remaining amounts between the shareholders, Paul and Rana, either as equity claims or as a distribution to shareholders.
- (d) The Trustee was contacted by Lenczner Slaght LLP (“**Lenczner**”), former counsel to Rana, in January of 2024. In connection with Lenczner’s action for unpaid legal fees in the amount of \$253,897.20 plus interest against Rana, Lenczner advised the Trustee that it was asserting a solicitor’s lien over distributions in favour of Rana and requesting advance notice of any distributions to Rana or Paul.
- (e) By early September, it became evident that the parties involved in the matter would be unable to reach an agreement on how the the proceeds should be distributed. The Trustee sought a scheduling appearance, and Justice Penny agreed that, for efficiency, this matter should be heard as a motion by the Trustee for advice on the administration of the estates under section 34 of the BIA with a timetable to be agreed upon by all parties involved.

Relevant Background of Receivership Proceedings and the Bankruptcy Claims Process

- (f) RGC operated a trucking business consisting of a fleet of vehicles and had previously owned certain real estate assets. Paul and Rana are the ultimate owners of the RGC entities as set out in the minutes of settlement negotiated between Rana and Paul.
- (g) Pursuant to an order of the Court made on May 26, 2021, as amended and restated on June 4, 2021, KSV Restructuring Inc. was appointed as receiver of RGC.
- (h) On September 16, 2021, the Court granted an order in the Receivership Proceedings, which established a claims process for RGC's creditors.
- (i) KSV was unable to make a distribution to creditors and/or shareholders in the Receivership Proceedings because it was unable to obtain a comfort letter or clearance certificate from Canada Revenue Agency. Accordingly, KSV determined that the final matters, including distribution to unsecured creditors, are most efficiently completed in a bankruptcy.
- (j) On February 14, 2024, the Court granted an order in these Bankruptcy Proceedings, deeming that proofs of claim filed in the Receivership Proceedings be treated as proofs of claim filed in these Bankruptcy Proceedings, and dispensing with the requirement that creditors of the Bankrupt Entities who have filed such proofs of claim file additional proofs of claim in the Bankruptcy Proceedings.

Substantive Consolidation

- (k) The Trustee is seeking to substantively consolidate the Trucking Business.
- (l) The Trustee is of the view that substantive consolidation is fair and reasonable in the circumstances. All third-party claims would be paid in full in a substantive consolidation.
- (m) Prior to the receivership, the shareholders entered into an agreement that acknowledged their intent to share equally in the payments from all the RGC entities, provided that third party obligations were paid on time.
- (n) Prior to the Trustee's appointment, the businesses were operated as a single unit, using common staff and assets. Although an injunction was put in place in connection with the litigation allowing the brothers to operate separate aspects of the business, ASR was required to continue to fund Guru and the business continued to share certain assets and functions.

Unsecured Claims

- (a) Unsecured claims of approximately \$1.6 million have been filed or deemed to be filed in the Bankruptcy Proceedings. The majority of claims were asserted against ASR, but additional claims were filed against ProEx and Guru. No claims have been filed against 222.
- (b) In connection with the Receivership Proceedings, Paul filed a proof of claim against RGC on October 29, 2021, as amended on July 27, 2022 (the "**Original Claim**"). On December 15, 2023, Paul filed a further supplement to the proof of

claim in connection with the bankruptcy filings (the “**Supplemental Claim**”, together with the Original Claim, “**Paul’s Claim**”).

- (c) Paul has asserted unsecured claims against the Bankrupt Entities in the amount of \$117,693.40. The Trustee is satisfied with the documentation provided in respect of the unsecured claims and has accepted the claim.

Equity Claim

- (d) Paul’s Claim contains two other major components – a claim for breach of the October minutes (the “**Wrongful Conduct Claim**”) and a claim for a 50% portion of the proceeds and any other amounts recovered by the debtors in his capacity as a shareholder (the “**Ownership Claim**”).¹
- (e) Following the Fifth Report to Court dated September 24, 2021, the receiver retained Grant Thornton Ltd. to prepare an independent valuation of the Trucking Business. The valuation showed that as of October 2018, the Trucking Business had a value of approximately \$5,300,000, and Paul’s 50% share of the Trucking Business had a value of approximately \$2,650,000. Based on the valuation, this is the amount that Paul would have received if the Trucking Business had been sold in October 2018. As a result, the Trustee is of the view that the maximum allowable claim against ASR would be \$2,650,000.
- (f) The Trustee is of the view that the Wrongful Conduct Claim should be accepted as an equity claim. The inspectors, with the exception of Sam Dukesz, as counsel to

¹ The Trustee is of the view that the Ownership Claim is a claim for distribution of surplus proceeds.

Paul, who was excused from the meeting for purposes of the discussion, voted in favour of accepting the claim and authorized a distribution in respect of the same.

- (g) The Trustee understands that both Rana and Lenczner may dispute the classification of the Wrongful Conduct Claim as an equity claim. As such, the Trustee is seeking this Court's guidance under section 34 on the treatment of the Wrongful Conduct Claim in order to facilitate the distributions in a timely manner.

Claims in Respect of the Surplus

- (y) Section 144 of the BIA provides that after all claims are paid in full, with interest, the bankrupt is entitled to a return of the surplus. Nonetheless, given that the receiver was appointed in the context of a shareholder dispute, the Trustee is of the view that returning the remaining funds to the Bankrupt Entities for distributions is not feasible and will only result in further litigation.
- (z) The Trustee seeks authorization to deliver any surplus proceeds to shareholders after taking into consideration the outstanding costs awards and orders of this Court.

Other Grounds

- (aa) The provisions of the BIA, including sections 34 and 183;
- (bb) The provisions of the *Courts of Justice Act* (Ontario) and the inherent and equitable jurisdiction of this Court; and
- (cc) Such further and other grounds as the lawyers may advise and this Honourable Court may permit.

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

- (dd) Second Report of the Trustee dated October 18, 2024; and
- (ee) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

October 18, 2024

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Lawyers for KSV Restructuring Inc. in its capacity as
Trustee

TO: THE SERVICE LIST

Schedule "A"

Draft Form Order

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE)
)
JUSTICE PENNY) WEDNESDAY, THE 27TH
 DAY OF NOVEMBER, 2024

**IN THE MATTER OF THE BANKRUPTCY OF
PROEX LOGISTICS INC., GURU LOGISTICS INC., 1542300 ONTARIO INC. AND 221589
ONTARIO INC.**

**ORDER
(Substantive Consolidation, Claim and Surplus Distribution)**

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**") in its capacity as trustee ("**Trustee**") in the Bankruptcy of Proex Logistics Inc. ("**ProEx**"), Guru Logistics Inc. ("**Guru**"), 1542300 Ontario Inc. (operated as ASR Transportation) ("**ASR**") and 2221589 Ontario Inc. ("**222**") (collectively, the "**Bankrupt Entities**") pursuant to the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the "**BIA**") and the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "**CJA**"), for an order, among other things, (a) approving the substantive consolidation of ProEx, Guru and ASR (the "**Trucking Business**"), (b) authorizing the Trustee to accept the claims against ProEx, Guru and ASR on a consolidated basis, (c) authorizing the Trustee to make distributions to the shareholders of the Bankrupt Entities following the payment of creditors in full, and (d) approving the Trustee's reports filed in this proceeding, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of the Trustee, the Second Report of the Trustee dated October ●, 2024 (the "**Second Report**"), and on hearing the submissions of counsel for the

Trustee, ●, and no one else appearing although duly served as evidenced by the Affidavit of Service of Stephanie Fernandes sworn October ●, 2024 filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of this motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Second Report.

SUBSTANTIVE CONSOLIDATION

3. **THIS COURT ORDERS** that the bankruptcy proceedings of Proex, Guru, and ASR are substantively consolidated.

PAUL'S CLAIM

4. **THIS COURT ORDERS** that the Trustee is authorized to accept Paul's Claim against the Trucking Business as follows:

(a) an unsecured claim in the amount of \$117,693.40; and

(b) an equity claim in the amount of \$2,650,000.

DISTRIBUTION DIRECTIONS

5. **THIS COURT ORDERS** that after the final distributions, with interest if applicable, are made to creditors under the BIA, the Trustee be and is hereby authorized and directed to distribute any surplus of proceeds from the bankruptcy estates to Paul and Rana as shareholders of the Bankrupt Entities, provided however, up to \$[●] in respect of costs of the Receivership

Proceedings and the costs awards shall be payable to Paul prior to payment of any amounts to Rana.

6. **THIS COURT ORDERS** that in carrying out the shareholder distribution, neither the Bankrupt Entities nor the Trustee is required to comply, or otherwise effect compliance, with any requirement under the *Ontario Business Corporations Act* (the “**OBCA**”) or any regulation thereunder, or any other statutory or regulatory requirement relating to the authorization or payment of a return of stated capital or a dividend. In particular, but without limiting the generality of the foregoing, neither the Bankrupt Entities nor the Trustee is required to comply with any statutory or regulatory requirement for calling or holding a shareholders' meeting, any required ordinary or special resolution of the shareholders or directors of the Bankrupt Entities, or any procedural or administrative formality related to the foregoing. All necessary approvals, resolutions, filings and procedural formalities necessary to make the distributions are hereby deemed to have been obtained or complied with and the distributions shall be deemed to be a return of stated capital and/or a dividend by the Bankrupt Entities for the purposes of the OBCA and applicable laws as set out herein.

7. **THIS COURT ORDERS** that the Trustee is hereby authorized to withhold a portion of the remaining surplus that the Trustee determines to be reasonable, after payment in full of the Bankrupt Entities' creditors (with interest in accordance with the provisions of the BIA), in order to fund all fees, costs and contingencies necessary to complete the administration of the Bankruptcy Proceedings and the Receivership Proceedings.

8. **THIS COURT ORDERS** that in carrying out the terms of this Order, the Trustee and its agents and representatives, (i) shall incur no liability or obligation and shall be released and discharged from any and all demands, losses, claims, damages or liabilities, of any nature or kind,

to any person, save and except for any fraudulent act, gross negligence or willful misconduct on its part, as so found by a court of competent jurisdiction, (ii) shall be entitled to rely on the books and records and information of the Bankrupt Entities, including the Settlement Agreements which identify Paul and Rana as the sole shareholders, all without independent investigation, and (iii) shall not be liable for any demands, losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or resulting from any errors or omissions in such books, records or information, save and except for any fraudulent act, gross negligence or wilful misconduct on its part. For greater certainty, but without limiting the generality of the foregoing, the Trustee shall not be liable to any government or regulatory agency or authority for failing to withhold or remit any amount owed by the shareholders in taxes in respect of the distributions described above, all of which taxes shall be for the account of such shareholders.

APPROVAL OF THE REPORTS

9. **THIS COURT ORDERS** that the Preliminary Report, the First Report, the Second Report and the activities and conduct of the Trustee described therein be and hereby are authorized and approved, provided, however, that only the Trustee, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

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

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal or regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Trustee and its respective agents and representatives in carrying out the terms of this Order. All such courts, tribunals, regulatory and administrative bodies are hereby respectfully

requested to make such orders and to provide such assistance to the Trustee as may be necessary or desirable to give effect to this Order or to assist the Trustee and its respective agents and representatives in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 AM on the date of this Order without the need for entry or filing.

IN THE MATTER OF THE BANKRUPTCY OF
PROEX LOGISTICS INC., GURU LOGISTICS INC., 1542300 ONTARIO INC. AND 2221589 ONTARIO INC.

Court File No. BK-24-3014702-0031

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Substantive Consolidation, Claim and Surplus Distribution)

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Lawyers for KSV Restructuring Inc. in its capacity as Trustee

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Court File No. BK-24-3014702-0031

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PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Lawyers for KSV Restructuring Inc. in its capacity as Trustee

TAB 2



**Second Report of
KSV Restructuring Inc.
as Licensed Insolvency Trustee of ProEx
Logistics Inc., Guru Logistics Inc., 1542300
Ontario Inc. and 2221589 Ontario Inc.**

October 18, 2024

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COURT FILE NO:
BK-24-03014702-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY OF PROEX LOGISTICS INC., GURU LOGISTICS
INC., 1542300 ONTARIO INC. AND 221589 ONTARIO INC.

SECOND REPORT OF
KSV RESTRUCTURING INC.
AS LICENSED INSOLVENCY TRUSTEE

OCTOBER 18, 2024

1.0 Introduction

1. This report (“Report”) is filed by KSV Restructuring Inc. (“KSV”) in its capacity as trustee (the “Trustee”) of ProEx Logistics Inc. (“ProEx”), Guru Logistics Inc. (“Guru”), 1542300 Ontario Inc. (operated as ASR Transportation) (“ASR”), and 221589 Ontario Inc. (“222”) (collectively, the “Bankrupt Entities”).
2. Pursuant to an order dated October 23, 2023 (the “Assignment Order”) granted in the Receivership Proceedings (as defined below), KSV, in its capacity as Receiver (as defined below), was authorized to assign the Bankrupt Entities into bankruptcy. A copy of the Assignment Order is attached hereto as **Appendix “A”**. The Assignment Order provides for the procedural consolidation of the estates but not for substantive consolidation.
3. The Receiver has received multiple urgent requests from creditors seeking distributions in the Receivership Proceedings. However, the Receiver was unable to make any distributions to creditors or shareholders because it was unable to obtain a comfort letter or clearance certificate from Canada Revenue Agency (“CRA”). Accordingly, the Receiver determined that the final matters in the Receivership Proceedings, including distributions to unsecured creditors, would be most efficiently completed in a bankruptcy.
4. The Bankrupt Entities were assigned into bankruptcy on November 27, 2023, and KSV was appointed Trustee, subject to confirmation at the First Meeting of Creditors. The First Meeting of Creditors was held December 18, 2023 at which KSV was confirmed as Trustee and inspectors (the “Inspectors”) were appointed by the creditors present at the meeting.

5. As of the date of this Report, approximately \$4 million is available for distribution to the Bankrupt Entities' creditors less any costs to be incurred in the receivership or bankruptcy.
6. There are limited remaining matters in these bankruptcy proceedings (the "Bankruptcy Proceedings"). The Inspectors have approved distributions to unsecured creditors and a distribution to one of the shareholders, Swinderpal Singh Randhawa ("Paul"), on account of his equity claim. If the estates continue to be administered separately, there will be insufficient funds to satisfy all unsecured claims in full.
7. The Trustee is of the view that the substantive consolidation of ProEx, ASR and Guru is warranted under the circumstances and aligns with the remedial purposes of the the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"). Substantive consolidation of these three entities would enable the full payment of unsecured claims. The only parties who may face potential prejudice from this consolidation are the shareholders, who remain locked in a dispute over the distribution of proceeds from the estates.
8. The central issue in this motion is the allocation of funds remaining after the satisfaction of unsecured claims as between the two shareholders, Paul and Rana Partap Singh Randhawa ("Rana"). The Trustee recommends that certain amounts be allocated to Paul as an equity claim, with the balance of the amounts paid to Paul in accordance with the outstanding costs awards noted below.
9. In August 2024, the Trustee was advised by Lenczner Slaght LLP ("Lenczner"), former counsel to Rana, that it intended to bring a motion in the Bankruptcy Proceedings seeking a solicitor's lien and a charging order over any funds to be distributed to either Rana or Paul, should such amounts have been payable to Rana.
10. In August 2024, the Trustee wrote to counsel to Paul and Lenczner advising of the proposed distributions in respect of unsecured claims and equity claims, and requesting confirmation of their positions on the matter. Although the Trustee is of the view that the proposed distributions are appropriate under the BIA, it is also mindful of the longstanding disagreements between the parties and intends to ensure that all parties are provided a fair opportunity to be heard in the matter.
11. At a case conference, Justice Penny agreed that for efficiency, the matter should proceed as a motion by the Trustee for advice and direction on the administration of the estates under section 34 of the BIA, with a timetable to ensure the matter proceeds as scheduled. A copy of the Endorsement is attached as **Appendix "B"**.
12. While the Trustee was hopeful that the issues between the parties could be narrowed and advanced as a motion for more limited relief, it has been unable to obtain a substantive response from Rana's counsel, notwithstanding repeated efforts to coordinate discussions regarding outstanding issues. As such, the Trustee seeks the Court's advice and direction on next steps in the Bankruptcy Proceedings to avoid unnecessary costs or allegations that the Trustee has not afforded Rana a fair opportunity to express his concerns. The Trustee notes that under the BIA, once the Trustee has determined the treatment of a claim, a challenge to a claim can be brought by a creditor or the debtor. No such challenge has been raised as of the date of this Second Report.

13. The Trustee also notes that protracted litigation regarding the claims and the ultimate distribution to shareholders will erode the value of the estate. Other than a claim against Rana, no assets remain to be realized upon. As such, an efficient resolution is in the best interest of all parties.

1.1 Purpose of this Report

1. The purpose of this Report is to provide the Court with information in support of the Trustee's motion under section 34 of the BIA, seeking advice and direction regarding the distribution of funds remaining in the estate. Specifically, the Trustee is seeking an order:
 - a) substantively consolidating the estates of ProEx, Guru and ASR (the "Trucking Business");
 - b) approving the Trustee's determination on the unsecured claims and equity claims filed by Paul;
 - c) providing direction on the distribution of funds remaining after the payment of all claims, considering that it is impractical to return the funds to the companies and there are competing claims from Rana, Paul, and Lenczner regarding entitlement to these amounts; and
 - d) approving the Trustee's reports filed in these proceedings.

1.2 Currency

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

1.3 Restrictions

1. The Trustee has not audited, or otherwise attempted to verify, the accuracy or completeness of the financial information relied upon in this Report in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Trustee 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 financial information presented in this Report should perform its own diligence.
2. The Trustee accepts no responsibility for any reliance placed by any third party on RGC's (as defined below) financial information presented herein, nor for any information concerning potential recoveries.

2.0 Relevant Background

1. ProEx, Guru, ASR, 222, 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") operated a trucking business consisting of a fleet of vehicles. RGC provided international truckload services between the US and Canada with Ford Motor Company as its largest customer. In addition, RGC owned certain real estate

that was liquidated prior to the Receiver's appointment. Paul and Rana are the ultimate shareholders of the RGC entities.

2. Since 2018, Paul and Rana have been involved in a dispute concerning, among other things, the ownership, operation and sale of RGC.
3. On October 1, 2018, Rana and Paul, in their personal capacities and each on behalf of the corporate respondents, entered into Minutes of Settlement (the "October Minutes"), which provided, among other things: (a) that Rana and Paul each own 50% of RGC; and (b) a process to sell the Trucking Business and to equally divide the proceeds. A copy of the October Minutes is attached as Appendix "C" to the Fifth Report (defined below), which is attached hereto as **Appendix "C"**.
4. On September 13, 2019, the parties executed a further settlement to address the unequal benefits previously paid to the shareholders. A copy of the settlement agreement (the "Unequal Benefits Settlement" and together with the October Minutes the "Settlement Agreements") is attached as Appendix "D" to the Fifth Report, which is attached hereto as Appendix "C". Among other things, the Unequal Benefits Settlement provides that the brothers intend to receive equal payments from RGC, "provided that all liabilities as they generally come due of the RGC entities to third parties, such as all obligations to the Canada Revenue Agency and its provincial equivalent, are honoured on time".
5. In the context of the dispute between Paul and Rana, on May 19, 2021, the Honourable Justice Koehnen released a decision which, among other things, contemplated the issuance of the Receivership Order for the purposes of KSV, as Receiver, to carry out a sale mandate (the "Sale Mandate") and an investigation (the "Investigation Mandate"). A copy of the decision is attached as Appendix "A" to the Fifth Report, which is attached hereto as Appendix "C".
6. 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 "Receiver") of all the assets, undertakings and property of RGC (the "Receivership Proceedings"). The Receivership Order was amended on June 4, 2021 (the "Amended Receivership Order").

2.1 Investigation Mandate

1. The Receiver concluded its Investigation Mandate and identified conclusive evidence that Rana was working with another trucking company, Motion Transport Ltd. ("Motion") and transferring RGC's assets, resources, personnel, and revenues to Motion in contravention of the October Minutes and with the aim of eroding the value of RGC. The Receiver's findings were summarized in its Fifth Report to Court dated September 24, 2021 (the "Fifth Report"). A copy of the Fifth Report is attached hereto as **Appendix "C"**.
2. Following a review of the potential claims identified in the Fifth Report and the associated costs of pursuing these claims, the Receiver filed a Notice of Action and Statement of Claim against Rana.

2.2 Sale Mandate and the Assets Recovered

1. At the commencement of its mandate, the Receiver determined that it needed to immediately discontinue RGC's business and operations because they were no longer viable.
2. The Receiver developed a sale process to sell the Trucking Business ("Sale Process"). The Sale Process was approved pursuant to an order dated July 21, 2021.
3. As set out in the Fourth Report of the Receiver dated September 8, 2021 (the "Fourth Report"), there was strong interest in the assets and as of the bid date, 32 prospective purchasers had submitted bids. The Receiver ultimately selected the bid from McDougall Auctioneers Ltd. (the "Auctioneer") because, among other things, the offer from the Auctioneer provided for competitive guaranteed minimum proceeds (the "Guaranteed Minimum") and included potential upside dependent on the Auctioneer's sale results.
4. Pursuant to the Auction Approval Order, the Receiver entered into an Auction Services Agreement with the Auctioneer. Pursuant to the Auction Services Agreement, the first auction was held on October 22, 2021, with subsequent sales for additional assets that were not sold at the original auction.
5. Additional details of the Sale Process can be found in the Seventh Report of the Receiver dated September 21, 2022.
6. As at the date of this Second Report, approximately \$4 million in cash is available for distribution to the creditors of the Bankrupt Entities, less costs to complete the administration of these proceedings. The cash primarily represents proceeds from the sale of vehicles and refunds received from Canada Revenue Agency. With the Inspectors' approval, the Trustee allocated the cash among the Bankrupt Entities as follows:

Bankrupt Entity	(\$000s)
ASR	2,932
ProEx	52
Guru	528
222	518
Total	4,030

7. Besides the cash balances, the only other potentially significant asset of the Bankrupt Entities consists of litigation claims against Rana.

3.0 The Claims Process

1. On September 16, 2021, the Court granted an order in the Receivership Proceedings (the "CPO") establishing a claims process for RGC's creditors. This process required creditors to submit claims in a manner similar to a bankruptcy claims process, with October 31, 2021, established as the Claims Bar Date.

2. More than 60 claims were filed with the Receiver pursuant to the CPO.
3. Following the review of these claims, the Receiver issued several Notices of Revision or Disallowances (“NORD”) and reached resolutions with each claimant who received a NORD.
4. Due to RGC’s outdated tax records at the time of the CPO and the Receiver's intention to cooperate with the government, the CPO did not preclude claims by the federal or provincial governments regarding corporate or sales and use taxes.
5. Following the assignment, the Trustee brought a motion before this Court to allow the Trustee to allow the use of proofs of claim filed in the Receivership Proceedings. This measure aimed to alleviate the burden on small businesses and individuals with claims against the debtors, preventing unnecessary re-filing of the same information.
6. On February 14, 2024, the Court granted the order for the relief sought by the Trustee (the “Prior Claims Order”). A copy of the Prior Claims Order is attached hereto as **Appendix “D”**. Creditors were free to file new proofs of claim or supplement their prior claims; six creditors opted to do so. The CRA has also received notice of the Bankruptcy Proceedings and filed proofs of claim, as noted below.

4.0 Claims Asserted by Paul

4.1 Process for Reviewing Paul’s Claim

1. Paul filed a proof of claim against RGC on October 29, 2021, as amended on July 27, 2022 (the “Original Claim”). On December 15, 2023, Paul filed a further supplement to the proof of claim in connection with the bankruptcy filings (the “Supplemental Claim”, together with the Original Claim, referred to as “Paul’s Claim”). Paul’s Claim asserts unpaid wages, business expenses, non-compliance with the October Minutes, and an ownership interest in the Trucking Business or its proceeds. A copy of Paul’s Claim, as amended, is attached as **Appendix “E”**. Paul also provided supplemental support for his claim including bank statements and uncashed cheques. Supporting documents, including bank statements and uncashed cheques, are not attached due to personal information but can be provided upon request.
2. The Trustee has reviewed Paul’s Claim and has engaged in discussions with Paul’s counsel to request clarification and additional documentation.

4.2 Paul's Unsecured Claim

1. Paul has filed an unsecured claim totalling \$117,693.40 against RGC, although the supporting documentation relates to ProEx. The components of Paul's unsecured claim against the Bankrupt Entities are as follows:

(unaudited; \$)	Amount
Paul's Payroll	28,852.03
Paul's wife's Payroll	14,380.70
Subcontractor payments to Amar	24,000.00
Expenses advances to business	41,719.21
Interest on credit card	8,741.46
	<u>117,693.40¹</u>

2. The Trustee notes the following observations regarding Paul's Claim:
 - the Trustee is satisfied with the supporting documentation provided by Paul;
 - Paul and his wife are not entitled to priority for wages under sections 81.3, 81.4 or 136 of the BIA as they are not acting at arm's length with the Bankrupt Entities and the Trustee is unable to verify whether such claims are "proper transactions" under the BIA and Paul is a director of Proex. The Trustee notes that, under the applicable legislation, the Bankrupt Entities may be considered common employers and would therefore be jointly liable for such amounts. Given the Trustee's position on substantive consolidation, it may not be necessary for the Court to make a determination on this issue;
 - with respect to the balance of Paul's claim, the Trustee understands that Paul is of the view that his claim should be against all the RGC entities, notwithstanding that the documentation provided relates to ProEx. Again, further determination may be unnecessary due to the Trustee's position on substantive consolidation.
3. If the estates are substantively consolidated, all unsecured creditors will be paid in full (as set out in the table below).
4. The Trustee is of the view that the amounts above are owing as ordinary unsecured claims.

4.3 Equity Claims

1. Paul's Claim includes two components related to his role as shareholder: a claim for breach of the October Minutes (the "Wrongful Conduct Claim") and a claim for 50% of the proceeds and any other amounts recovered by the debtors in his capacity as a shareholder (the "Ownership Claim").²

¹ Paul has advised that he may have additional claims that are not captured in the claims noted above.

² The Trustee is of the view that the Ownership Claim is a claim for a return of capital as a shareholder and should be dealt with in the return of surplus as described below

2. With respect to the Wrongful Conduct Claim, Paul seeks damages for the difference between the proceeds from the sale of the Trucking Business he ultimately receives and the amount that he would have received had the Trucking Business been sold in the manner required by the October Minutes. Paul alleges that Rana obstructed the timely sale of the Trucking Business in violation of the October Minutes. The Wrongful Conduct Claim alleges that as the directing mind of certain of the RGC entities (including ASR), and pursuant to the corporate identification doctrine, principles of attribution, agency and vicarious liability, Rana's conduct is deemed to have been that of RGC.
3. The Trustee reviewed the Wrongful Conduct Claim and proposed its acceptance as an equity claim. All Inspectors, with the exception of Sam Dukesz, as counsel to Paul, who was excused from the meeting for purposes of the discussion, voted in favour of accepting the claim and authorized a distribution in respect of the same.
4. The Trustee's evaluation of the Wrongful Conduct Claim relied on the findings of the Investigation Mandate. As set out in the Fifth Report, the Receiver found that Rana was actively engaged in the set-up and operation of Motion to the detriment of the efforts to sell the Trucking Business, including:
 - (a) representing or permitting an ASR employee to represent that Motion was "a wholly owned subsidiary of ASR";
 - (b) 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;
 - (c) causing RGC to transfer 13 vehicles to Motion, three of which were subsequently transferred to another company beneficially owned by Rana;
 - (d) permitting ASR vehicles and fuel cards to be used to support Motion's business; and
 - (e) providing material support to Motion through his sons in the form of labour and capital.
5. The facts set out in the Fifth Report disclose that ASR, under Rana's direction, diverted assets to impede the Sale Process and diminish the value of any assets ultimately sold.
6. Following the Fifth Report, the Receiver engaged Grant Thornton Ltd. to prepare an independent valuation (the "Valuation Report") of the Trucking Business, specifically, ASR, Guru and ProEx.³ The valuation showed that as of October 2018, the Trucking Business had a value of approximately \$5,300,000, and Paul's 50% share of the Trucking Business had a value of approximately \$2,650,000. This amount represents

³ Although Paul's claim in the Receivership was asserted against various additional entities, the Receiver retained the valuator solely in respect of the main operating entities. The remaining entities are not bankrupt and not a part of these proceedings.

what Paul would have received if the Trucking Business had been sold in October 2018.⁴ A copy of the Valuation Report is attached hereto as **Appendix “F”**.

7. As a result, the Trustee is of the view that the maximum allowable claim against the Trucking Business would be \$2,650,000 (the “Equity Claim”).
8. Rana’s counsel has not confirmed Rana’s position on this claim but has advised that a motion under section 34 of the BIA would provide it with the opportunity to present any relevant objections.
9. The Trustee understands that Lenczner may object to the Equity Claim to the extent that there are insufficient funds remaining to satisfy its claims against Rana (as described below).
10. Aware of potential objections to the distributions, the Trustee is bringing this motion to provide a single forum for the parties to raise issues related to distributions.

5.0 Claims in Respect of the Surplus

1. Section 144 of the BIA stipulates that after all claims are paid in full with interest, the bankrupt is entitled to a return of the surplus. The Receiver was appointed because the shareholders and directors of RGC were unable to continue under normal corporate governance. Consequently, the Trustee believes that returning the remaining funds to the Bankrupt Entities for distribution is impractical and may lead to further litigation.
2. Following payment of creditor claims, the Trustee proposes to return the remaining funds to the shareholders, subject to any orders of this Court regarding the allocation of such funds. This approach has been employed in other solvent bankruptcy proceedings through a motion under section 34 of the BIA.
3. If the Wrongful Conduct Claim is admitted in full and paid from the consolidated entities, the only remaining funds will be in 222. Conversely, if the Wrongful Conduct Claim is not accepted, all remaining funds will need to be distributed to the shareholders.
4. The Trustee is seeking authorization to make such shareholder distributions, net of applicable withholdings.
5. Regardless of the amount remaining, the parties have raised the following issues that may alter the allocation of distributions to the shareholders:
 - (a) Rana has outstanding costs awards in favour of Paul, with the largest being \$525,000 (not including interest and costs of enforcement) issued by the arbitrator and subsequently enforced by an order of Justice McEwen dated February 28, 2022, a copy of which is attached hereto as **Appendix “G”**.

⁴ A copy of the valuation was provided to the parties in May 2022.

- (b) The endorsement of Justice Steele dated March 12, 2023, a copy of which is attached hereto as **Appendix “H”**, provides that Rana is to pay the costs of the Investigation Mandate for both Paul and the Receiver.
 - (A) Pursuant to the endorsement, Paul and Rana were to settle the amount of Paul’s costs or return to Court for further assistance.
 - (B) The Trustee is of the view that the costs incurred by KSV in its capacity as Receiver, and its counsel in the Receivership Proceedings and the Investigation Mandate should be allocated 60% to the Investigation Mandate and 40% to the Sale Mandate. This split results in \$667,058.00 being allocated to the Receivership Proceedings, and \$1,032,538.85 to the Investigation Mandate.
 - (c) On May 12, 2023, Lenczner issued a statement of claim against Rana seeking \$253,897.20 plus interest for unpaid legal fees. The Trustee understands that Lenczner intends to bring a motion in the Bankruptcy Proceedings seeking a solicitor’s lien and charging order over any funds to be distributed to either Rana or to Paul in connection with a distribution on account of Paul’s equity interests. A copy of the correspondence from Lenczner (without the draft notice of motion) is attached hereto as **Appendix “I”**.
6. Given the above, the Trustee is of the view that Paul is entitled to payment of the outstanding costs awards at this juncture. Certain of the awards have been outstanding for several years, while Rana has been permitted to continue to file pleadings and participate in the Receivership Proceedings and the Bankruptcy Proceedings. As a result, the Trustee supports allocation of such amounts to Paul in satisfaction of the outstanding cost awards.
 7. The Trustee will respond to Lenczner’s motion when filed, but notes that any allegation that Rana assisted with the recovery of assets in the Receivership Proceeding should be examined in connection with the record in the Receivership Proceedings.
 8. While the Trustee has been attempting to minimize the litigation costs in the matter, it appears the issues noted above will require the Court’s direction. In advance of the hearing, the Trustee intends to continue to work with the parties to narrow the issues and minimize the need for court time and resources on this dispute.

6.0 Substantive Consolidation

1. RGC has historically operated on an interrelated basis, with staff providing services to each of the trucking companies and shared access to assets, notwithstanding the titling of the vehicles. In connection with the Sale Process, the Receiver undertook an extensive process to obtain titles in the name of the applicable RGC entities according to the available books and records and has generated financial statements and filed tax returns on that basis. The Trustee understands that financial statements were historically prepared for each of the entities, but certain financial statements could not be completed before the Receiver’s appointment because the shareholders had been unable to agree on the information required.

2. At the time the Receiver was appointed, ASR had access to a corporate credit facility in its name; the remaining members of the Trucking Business had no security over their assets in respect of the loan. However, an injunction had been issued prior to the Receiver's appointment, requiring ASR to continue funding Guru until a resolution was reached. A copy of the injunction order is attached as Appendix "E" to the Fifth Report, which is attached hereto as Appendix "C". The Receiver also notes that RGC was historically insured on a consolidated basis.
3. In connection with the Unequal Benefits Settlement, the brothers agreed that the intention was to receive equal benefits on a go forward basis, subject to the payment of third-party creditors.
4. Substantive consolidation is fair and reasonable in the circumstances because it facilitates the goal of returning funds to the creditors. Without substantive consolidation of the estates, certain creditors who filed their claims at ProEx would receive less than 100 cents on the dollar while funds would remain for payment to the shareholders at other entities. The only parties prejudiced by substantive consolidation are the shareholders of the business, who as noted above, previously indicated their intent to pay third party creditors in a timely manner as a condition to making further distributions to themselves and their families.

7.0 Distributions

1. In accordance with the BIA, the Trustee has reviewed the proofs of claim and consulted with the Inspectors regarding the proposed distributions.
2. At a meeting of Inspectors, on August 2, 2024, the Trustee reviewed the claims registers with the Inspectors and recommend distributions to the unsecured creditors following the expiry of the applicable notice periods, including notification to CRA.
3. On August 23, 2024, at Lenczner's request, the Trustee advised Lenczner of the distributions expected to be made. A copy of the correspondence is attached hereto as **Appendix "J"**.
4. A summary of proposed distributions to creditors is provided below.

(unaudited; \$000s)	ASR	ProEx	Guru	222	Consolidated, excluding 222
Cash available (less holdback for costs)	2,568	45	462	454	3,075
Distributions to Ordinary Creditors	(638)	(45)	(277)	-	(1,166)
Distributions to Equity Creditors	(1,930)	-	185	-	(1,909)
Surplus available for equity	-	-	-	454	-
Percentage recovery for ordinary claims	100%	18%	100%	n/a	100%
Percentage recovery for equity claims	80%	n/a	80%	n/a	72%

5. The Trustee observes that in the substantive consolidation scenario, general unsecured creditors would receive a distribution of approximately \$1.2 million, compared to approximately \$1 million in the unconsolidated scenario, due to insufficient funds to fully satisfy all claims in the latter. Specifically, in the unconsolidated scenario, ProEx's creditors would recover approximately \$45,000 on claims totaling around \$251,000. Creditors of ASR and Guru would not be impacted by the consolidation.

6. The Trustee is eager to make distributions to unsecured creditors as set out in the chart above and to facilitate a resolution of the disputes between the shareholders.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Trustee respectfully recommends that this Honourable Court make an order granting the relief sought in Section 1.1.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS TRUSTEE OF THE BANKRUPT ENTITIES
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE PENNY

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MONDAY, THE 23RD
DAY OF OCTOBER, 2023

B E T W E E N:

SWINDERPAL SINGH RANDHAWA

Applicant

- and -

RANA PARTAP SINGH RANDHAWA, PROEX LOGISTICS INC.,
GURU LOGISTICS INC., 1542300 ONTARIO INC. (OPERATED AS ASR
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
(Assignment into Bankruptcy)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and 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., (“**RGC**”) acquired for, or used in relation to a business carried on by RGC, for an Order among other things, (a) approving the

Report of the Proposed Receiver dated January 28, 2021, the Supplement to the First Report dated May 31, 2021, the Supplement to the Fourth Report dated September 13, 2021, the Eighth Report dated December 19, 2022 and the Ninth Report dated October 16, 2023 (the “**Ninth Report**”) of the Receiver and the activities of the Receiver as described therein (collectively, the “**Reports**”); (b) approving the fees and disbursements of the Receiver and its counsel as described in the affidavits of Noah Goldstein sworn October 16, 2023 and John Picone sworn October 16, 2023 (the “**Fee Affidavits**”); (c) authorizing the Receiver to make a distribution to the New Millennium Tire Centre (1519950 Ontario Inc.), on account of its secured claim; (d) assigning a subset of RGC, Proex Logistics Inc., Guru Logistics Inc., 1542300 Ontario Inc. (operated as Asr Transportation), and 2221589 Ontario Inc. (collectively, the “**Assigned Entities**”) into bankruptcy and appointing KSV as trustee in bankruptcy; and (e) upon the filing of a termination certificate terminating these receivership proceedings, discharging KSV as Receiver of RGC and releasing KSV and its counsel, was heard by judicial videoconference via Zoom at Toronto, Ontario;

ON READING the Notice of Motion of the Receiver dated October 17, 2023, the Reports 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 affidavit of service of Stephanie Fernandes sworn October 17, 2023, filed.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of this motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Ninth Report.

APPROVAL OF ACTIVITIES AND FEES

3. **THIS COURT ORDERS AND DECLARES** that the Report of the Proposed Receiver dated January 28, 2021, the Supplement to the First Report dated May 31, 2021, the Supplement to the Fourth Report dated September 13, 2021, the Eighth Report dated December 19, 2022 and the Ninth Report dated October 16, 2023, and the activities of the Receiver as set out therein be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of the Receiver and its counsel as set out in the Fee Affidavits be and are hereby approved.

5. **THIS COURT ORDERS** that the anticipated further fees and disbursements of the Receiver and its counsel in connection with the completion by the Receiver of its remaining duties and administration of the Receivership proceedings, estimated not to exceed \$75,000 (inclusive of HST) (the “**Remaining Fees and Disbursements**”) as described in the Ninth Report be and are hereby approved, and that the Receiver and its counsel shall not be required to pass their accounts in respect of any further activities in connection with the administration of the receivership proceedings, provided, however, that if the further fees and disbursements of the Receiver and its counsel in connection with the completion by the Receiver of its remaining duties and administration of the Receivership proceedings exceed the above estimate, the Receiver shall return to Court to seek approval to pay any such amounts in excess of the Remaining Fees and Disbursements pursuant to a further Order of the Court.

DISTRIBUTION

6. **THIS COURT ORDERS** that the Receiver is hereby authorized, without further order of this Court, to make a distribution to New Millennium Tire Centre (1519950 Ontario Inc.) from funds held by the Receiver in payment of the Secured Obligations (as defined in the Ninth Report) (the “**Distribution**”) in an amount not to exceed the amount owing by the applicable RGC entity under the Secured Obligations.

7. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to take all reasonably necessary steps and actions to effect the Distribution in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distribution.

8. **THIS COURT ORDERS** that any distribution in accordance with this Order shall be permanent and indefeasible payments of the Secured Obligations.

9. **THIS COURT ORDERS** that, notwithstanding: (a) the pendency of these receivership proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) or other applicable legislation in respect of RGC and any bankruptcy order issued pursuant to any such applications; (c) any assignment in bankruptcy made in respect of RGC; and (d) any provisions of any federal or provincial legislation, the Distributions shall be made free and clear of all encumbrances (including the charges set out in the Amended Receivership Order (the “**Charges**”)) and shall be binding on any trustee in bankruptcy that may be appointed in respect of RGC and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

ASSIGNMENT INTO BANKRUPTCY

10. **THIS COURT ORDERS AND DECLARES** that the Receiver is authorized to cause the Assigned Entities to be assigned into bankruptcy in accordance with the BIA and that KSV is authorized and empowered to act as trustee in bankruptcy of the Assigned Entities.

APPOINTMENT OF TRUSTEE IN BANKRUPTCY

11. **THIS COURT ORDERS** that, upon KSV's appointment as licensed insolvency trustee for the Assigned Entities (in such capacity, the "**Trustee**"), the Trustee may administer the bankruptcy estates of the Assigned Entities as follows:

- (a) a single court file number and title of proceeding of "In the Matter of the Bankruptcy of Randhawa Group of Companies";
- (b) the Trustee is authorized to administer the bankrupt estates of the Assigned Entities as if such estates were a single bankrupt estate for the purpose of carrying out its administrative duties and responsibilities as trustee under the BIA with respect to the administration of bankrupt estates generally, including without limitation as follows:
 - (i) the Trustee is authorized to send notice of the first meeting of creditors (the "**Notice**") in the manner prescribed by section 102 of the BIA by sending the Notice together with directions to download documents to accompany the notice set out in section 102(2) of the BIA (the "**Forms**");
 - (ii) meetings of creditors and inspectors in the bankrupt estates of the Assigned Entities may be convened through one combined advertisement

and conducted jointly provided that the results of any creditors vote shall be separately tabulated for each such bankrupt estate;

- (iii) the Trustee is authorized to use a consolidated form of proof of claim that directs creditors to identify the bankrupt estate in which a claim is made for voting and for distribution purposes;
- (iv) the Trustee is authorized to maintain a consolidated bank account with respect to the Assigned Entities' respective bankruptcy estates;
- (v) the Trustee is authorized to issue consolidated reports in respect of the bankruptcy estates of the Assigned Entities;
- (vi) the Trustee is authorized to perform a consolidated making, filing, advertising and distribution of all filings and notices in the bankrupt estates of the Assigned Entities required under the BIA; and
- (vii) a single group of inspectors shall be the inspectors for the consolidated bankruptcy estates of the Assigned Entities.

12. **THIS COURT ORDERS** that this procedural consolidation is not a substantive consolidation of the bankrupt estates of the Assigned Entities and will automatically terminate if the Trustee is replaced as licensed insolvency trustee of any, but not all, of the estates of the Assigned Entities.

13. **THIS COURT ORDERS** that any distributions from the Assigned Entities to Rana Partap Singh Randhawa (if any) and to Swinderpal Singh Randhawa shall account for the allocations contemplated in the endorsement of The Honourable Justice Steele dated March 12, 2023. If

those allocations cannot be determined without the Court's direction, they shall be brought to the attention of The Honourable Justice Steele in the manner contemplated at paragraph 30 of the endorsement.

14. **THIS COURT ORDERS** that after payment of the amounts set out in paragraphs 5 and 6 above and the fees and expenses of the Receiver and its counsel, the Receiver is authorized and directed to pay to the Trustee all remaining funds of the Assigned Entities.

GENERAL

15. **THIS COURT ORDERS** that nothing in this Order derogates from any rights that the Receiver or Trustee may have pursuant to the applicable provisions of the BIA or applicable legislation.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other jurisdiction 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 and to assist the Receiver and its agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that this Order is effective from today's date and it is made enforceable without any need for entry or filing.



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
(ASSIGNMENT INTO BANKRUPTCY)**

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Lawyers for KSV Restructuring Inc. in its capacity as
Receiver

Appendix “B”



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: BK-24-03014702-0031

DATE: September 24, 2024

NO. ON LIST: 1

**TITLE OF PROCEEDING: IN THE MATTER OF THE BANKRUPTCY OF PROEX LOGISTICS INC., GURU LOGISTICS, 1542300 ONTARIO INC & 2221589
BEFORE: JUSTICE PENNY**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
	PROEX LOGISTICS INC	

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
	KSV RESTRUCTURING INC.	

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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John M. Picone	Trustee	jpicone@cassels.com
Christopher Lee Jayson Thomas	Rana Randhawa	clee@LN.Law jthomas@LN.Law
Sam Hargreaves	Lenczner Slaght LLP	SHARGREAVES@Litigate.com

ENDORSEMENT OF JUSTICE PENNY:

[1] This motion for directions by the Trustee shall proceed for one half day starting at 10:00 AM on November 27, 2024.

[2] Counsel shall agree on a timetable to ensure the matter proceeds as scheduled.

].

Penny J.

Appendix “C”



**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: tonycolvin@asrtransport.com (mailto:tonycolvin@asrtransport.com)
Sent: Friday, August 10, 2018 3:50 PM
To: Kimberly Garcia <kjgarcia@LEKNSATE-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 jointly owned subsidiary of ASR.
 Both quotes are in GFN funds.

Also please note that ProEx Logistics no longer per main - 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
 2880 South Sheridan Way, Suite 200
 Oakville, ON L6L 7G8
 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 Choudhary [mailto:baldevchoudhary@outlook.com]
Co: Rana Roshan [mailto:rana@astranepart.com]
From: Versteeg, Kelly (K.) [mailto:kverste@ford.com]
Sent: Fri, 30/12/2019 2:01:50 PM (UTC)
Subject: RE: Current Survey

Good morning,

Ford Technology Motion Transport.com website, we would like to assist the in the vehicle, some equipment and dispatch. We would also like a better understanding of the ownership structure.

Thank you,

Kelly Versteeg
Transportation Technology Super
Ford Motion Company
System of Sales
Desk: 513-390-8411
Cell: 513-475-0071

FOI - This email is to be used for purchasing that strictly for professional services and not for any other purpose.

From: Baldev Choudhary [mailto:baldevchoudhary@outlook.com]
Sent: Wednesday, February 20, 2020 5:31 PM
To: Versteeg, Kelly (K.) [mailto:kverste@ford.com]
Subject: Current 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.

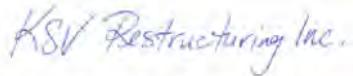
⁷⁹ Claims will need to be assessed on an entity by entity basis.

\$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.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
RGC
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

APPENDIX “A”

[ATTACHED]

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.

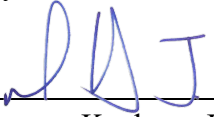
¹⁶ *DeGroot v. DC Entertainment Corp.*, 2013 ONSC 7101 at paras. 58 and 60.

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”

[ATTACHED]

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

THE HONOURABLE MISTER)

FRIDAY, THE 4th

JUSTICE KOEHNEN)

DAY OF JUNE, 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

**AMENDED AND RESTATED ORDER
(appointing Receiver)**

THIS MOTION made by KSV Restructuring Inc. ("**KSV**"), in its capacity as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Respondent corporate entities (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, the Amended Motion Record containing the affidavit of Swinderpal Singh Randhawa ("**Paul**"), sworn June 26, 2020, the affidavit of Don Colbourn, sworn June 26, 2020, the affidavit of Shimshon Dukesz, sworn July 5, 2020, the affidavit of Monica Palko sworn November 11, 2020 and the

affidavit of Paul sworn January 28, 2021 (the "**Motion Record**"), the affidavits of Rana Partap Singh Randhawa ("**Rana**"), sworn January 18, 2021, and February 22, 2021, the affidavit of Allan Nackan sworn February 22, 2021, the affidavit of Baldev Dhindsa, sworn January 18, 2021, the Awards and Arbitral Order of the Arbitrator dated July 3, 2020 and October 26, 2020 granted pursuant to the arbitration clause set out in the Minutes of Settlement dated October 1, 2018 (the "**Minutes**") between Paul and Rana, the Receiver's Motion Record dated May 27, 2021, including the First Report of the Receiver dated May 27, 2021 (the "**Receiver's Motion Record**"), the Receiver's Supplemental Motion Record dated May 31, 2021 (the "**Receiver's Supplemental Motion Record**"), including the Supplement to the First Report of the Receiver dated May 31, 2021 (the "**Supplement to the First Report**"), and the Affidavits of Service of Benjamin Goodis sworn May 27, 2021 and June 1, 2021, respectively, and on hearing the submissions of counsel for Paul, counsel for KSV, counsel for Rana and counsel for Motion Transport Ltd. ("**Motion**):

SERVICE

1. THIS COURT ORDERS that the time for service of the Receiver's Motion Record and the Receiver's Supplemental Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended, KSV is hereby appointed as Receiver, without security, over all of the assets, undertakings and properties of RGC acquired for, or used in relation to a business carried on by RGC, including all proceeds thereof (the "**RGC Property**").

RECEIVER'S MANDATE

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized to: (i) operate and manage RGC and sell the trucking, warehousing and logistics

business that is owned and operated through some or all of the Respondent entities (the “**Trucking Business**”) (the “**Sale Mandate**”); and (ii) investigate and report on any financial and operational issues identified by the Parties, including those identified in the awards of Larry Banack dated July 3, 2020 and October 26, 2020, and any other matters identified during the course of the Receiver’s investigation, in order to ensure that the Trucking Business is being sold in a manner that maximizes the value of that business (the “**Investigation Mandate**”).

4. THIS COURT ORDERS that the Receiver will pursue the Sale Mandate as expeditiously as reasonably possible in order to maximize the value of the Trucking Business on sale, as determined by the Receiver in its sole discretion.

5. THIS COURT ORDERS that the Receiver shall report to the Court on an interim and final basis as to the status of the Investigation Mandate (each, a “**Report**”). Both Paul and Rana shall be provided with a copy of any such Reports. The Reports may be filed under seal if requested by the Receiver or any of the Parties (as defined below), on terms that may be agreed among the Parties or ordered by the Court.

RECEIVER’S POWERS

6. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the RGC Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the RGC Property and any and all proceeds, receipts and disbursements arising out of or from the RGC Property;
- (b) to receive, preserve, and protect the RGC Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of RGC Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and

the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of RGC, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of RGC;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of RGC or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to RGC and to exercise all remedies of RGC in collecting such monies, including, without limitation, to enforce any security held by RGC;
- (g) to settle, extend or compromise any indebtedness owing to RGC;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the RGC Property, whether in the Receiver's name or in the name and on behalf of RGC, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to RGC, the RGC Property or the Receiver, and

to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) to market any or all of the RGC Property, including advertising and soliciting offers in respect of the RGC Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the RGC Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(l) to apply for any vesting order or other orders necessary to convey the RGC Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such RGC Property;

(m) 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;

- (n) to register a copy of this Order and any other Orders in respect of the RGC Property against title to any of the RGC Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of RGC;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of RGC, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by RGC;
- (q) to exercise any shareholder, partnership, joint venture or other rights which RGC may have;
- (r) to enter any premises owned or controlled by Motion and to take any steps the Receiver deems necessary to examine and preserve any and all of Motion's information, documents, records and electronic data, including but not limited to information relating to Motion's accounts or finance activities at any financial institution, with any trade creditor or with any other party; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons

(as defined below), including RGC and Motion, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

7. THIS COURT ORDERS that (i) Paul, Rana and Baldev Dhinsda ("**Baldev**"); (ii) Motion and RGC; (iii) all of Motion's and RGC's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any RGC Property or Motion Property in such Person's possession or control, shall grant immediate and continued access to any such RGC Property or Motion Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of RGC or Motion, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to any privilege attaching to the Record or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall

forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

10. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords of RGC with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

11. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST RGC OR THE RGC PROPERTY

12. THIS COURT ORDERS that no Proceeding against or in respect of RGC or the RGC Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way

against or in respect of RGC or the RGC Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

13. THIS COURT ORDERS that all rights and remedies against RGC, the Receiver, or affecting the RGC Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), and further provided that nothing in this paragraph shall (i) empower the Receiver or RGC to carry on any business which RGC is not lawfully entitled to carry on, (ii) exempt the Receiver or RGC from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by RGC, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

15. THIS COURT ORDERS that all Persons having oral or written agreements with RGC or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to RGC are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of RGC's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by

the Receiver in accordance with normal payment practices of RGC or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

16. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the RGC Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

17. THIS COURT ORDERS that all employees of RGC shall remain the employees of RGC until such time as the Receiver, on RGC's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

18. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the RGC Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the RGC Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is

disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any RGC Property shall be entitled to continue to use the personal information provided to it, and related to the RGC Property purchased, in a manner which is in all material respects identical to the prior use of such information by RGC, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the RGC Property or the Motion Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the RGC Property or the Motion Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

20. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and

except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

21. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the RGC Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the RGC Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

23. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

24. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel shall be funded first by RGC, or if RGC does not have sufficient funds, by or on behalf of Paul and Rana equally in respect of the Sale Mandate, which amount will be repaid from the proceeds of the sale of the RGC Property. The whole of the RGC

Property shall be and hereby is charged by way of a fixed and specific charge (the "**Funding Charge**") as security for the payment of any monies advanced by or on behalf of Paul and/or Rana to fund the Sale Mandate, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, save for the Receiver's Charge and subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

25. THIS COURT ORDERS that to the extent that the Receiver concludes that funds are required for the continued operation of the Trucking Business to maximize the value to be realized as part of the Sale Mandate, the Receiver shall offer both Paul and Rana the opportunity to lend funds to the Receiver on equivalent terms, and upon such offer being made and accepted by Paul, Rana, or Paul and Rana jointly, is hereby empowered to borrow from Paul, Rana, or Paul and Rana jointly (or if none of them agree, from a third party) by way of revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize on terms, including an appropriate rate or rates of interest, that reflect the full degree of risk to the lender(s) associated with such lending) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Operations Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, save for the Receiver's Charge, the Funding Charge and subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. For greater certainty, nothing in this Order shall require Rana or Paul to advance funds to the Receiver, RGC or any other person to fund the operations of the Trucking Business.

26. THIS COURT ORDERS that neither the Funding Charge, the Operations Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

27. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order, whether pursuant to the Funding Charge described in paragraph 24 above, or under the Operations Charge described in paragraph 25 above.

28. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to the Funding Charge and any and all Receiver's Certificates evidencing the same shall rank in priority to monies from time to time borrowed by the Receiver pursuant to the Operations Charge and any and all Receiver's Certificates evidencing the same, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

29. Paul will post \$100,000 with the Receiver, which shall be used to fund the initial fees and expenses of the Receiver and its counsel in respect of the Investigation Mandate. To the extent the \$100,000 is exhausted by the Receiver and its counsel, Paul will continue to post additional funds, in increments of \$25,000, to fund the fees and expenses of the Receiver and its counsel in respect of the Investigation Mandate until such time as the Investigation Mandate is completed or the Court orders otherwise.

30. Both Paul and Rana reserve their rights to claim at any time for a revised allocation of any past or future fees and disbursements paid to the Receiver or its counsel, or any other amounts ordered to be paid in connection with these proceedings and the proceedings before the Arbitrator, based on the interim and/or final results of the Sale Mandate and the Investigation Mandate. To this end, the Receiver shall hold in escrow all proceeds from the sale of the Trucking Business that are otherwise to be distributed to Paul or Rana pursuant to the October Minutes or otherwise until the issue of the allocation of costs has been resolved or further order of the court. For the avoidance of doubt, subject to further order of the Court, the Receiver may use the

proceeds of the sale of the Trucking Business to fund the costs of the receivership as set out in this order, including the fees and expenses of the Receiver and its counsel.

SERVICE AND NOTICE

31. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<https://www.ksvadvisory.com/insolvency-cases/case/rgc>>’.

32. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to RGC’s creditors or other interested parties at their respective addresses as last shown on the records of RGC and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

SEALING

33. THIS COURT ORDERS AND DECLARES that Confidential Appendix “1” to the Supplement to the First Report be and is hereby sealed and shall be treated as confidential until further order of this Court.

GENERAL

34. 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.

35. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of RGC or of Motion.

36. 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.

37. 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.

38. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

PLJ

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "Receiver") of the assets, undertakings and properties of the corporate entities listed on Schedule "A" hereto (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 26th day of May, 2021 (the "Order") made in an action having Court file number CV-18-593636-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses. For the avoidance of doubt, the amounts borrowed under this certificate shall have the benefit of the [Funding Charge / Operations Charge] set out in the Order.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Other than as set out in the Order with respect to priority of monies borrowed pursuant to Receiver Certificates, and any other Order of the Court, until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KSV RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

Schedule "A" to Receiver Certificate

Debtors:

1. PROEX LOGISTICS INC.;
2. GURU LOGISTICS INC.;
3. 1542300 ONTARIO INC. (OPERATED AS ASR TRANSPORTATION);
4. 2221589 ONTARIO INC.;
5. 2435963 ONTARIO INC.;
6. NOOR RANDHAWA CORP.;
7. SUPERSTAR TRANSPORT LTD.;
8. R.S. INTERNATIONAL CARRIERS INC.;
9. SUBEET CARRIERS INC.;
10. SUPERSTAR LOGISTICS INC.;
11. CONTINENTAL TRUCK SERVICES INC.; and
12. ASR TRANSPORTATION INC.

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

AMENDED AND RESTATED ORDER
(APPOINTING RECEIVER)

CASSELS BROCK & BLACKWELL LLP

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Lawyers for KSV Restructuring Inc. in its capacity as
Receiver

APPENDIX “E”
[ATTACHED]

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

APPLICATION UNDER SECTIONS 161, 207 AND 241 OF THE *BUSINESS
CORPORATIONS ACT*, R.S.O. 1990, c. B.16 AS AMENDED AND SECTIONS 35 AND 39 OF
THE *PARTNERSHIPS ACT*, RSO 1990, c P.5

MINUTES OF SETTLEMENT

WHEREAS on March 9th, 2018, the Applicant, Swinderpal Singh Randhawa ("**Paul**"), commenced the within Application seeking an Order that, among other things, recognized his 50% interest, beneficial or otherwise, in each of the Respondents, ProEx Logistics Inc. ("**ProEx**"), Guru Logistics Inc. ("**Guru**"), 1542300 Ontario Inc. (operated as ASR Transportation) ("**ASR**"), 2221589 Ontario Inc. ("**222**"), 2435963 Ontario Inc. ("**243**"), Noor Randhawa Corp. ("**Noor**"), Superstar Transport Ltd. ("**STL**"), R.S. International Carriers Inc. ("**R.S.**"), Subeet Carriers Inc. ("**Subeet**"), Superstar Logistics Inc. ("**SLI**"), Continental Truck Services Inc. ("**Continental**") and ASR Transportation Inc. ("**ASR Inc.**") (collectively, "**RGC**");

AND WHEREAS the Application also sought various relief relating to the nature of the business relationship between Paul and the Respondent, Rana Partap Singh Randhawa

("Rana"), including, but not limited to, declarations that Paul and Rana owned and operated RGC together as partners and/or 50-50 shareholders;

AND WHEREAS Paul and Rana (the "**Parties**") have agreed to resolve the issues raised in the Application in accordance with the terms set out in these Minutes of Settlement;

AND WHEREAS the principle underlying these Minutes of Settlement is the recognition of the settlement agreement reached by Paul and Rana providing that they each own a 50% interest in each of: i) the trucking, warehousing and logistics business that is owned and operated by Paul and Rana through some or all of ProEx, Guru, ASR, STL, Subeet, R.S., SLI, Continental, ASR Inc. (the "**Trucking Business**") and any other entities that Paul and Rana used to carry out the Trucking Business, including, but not limited to, ASR Warehousing and Logistics Inc.; and ii) the real estate business in respect of the Properties (as defined below) that is owned and operated by Paul and Rana through some or all of 222, Noor and 243 (the "**Real Estate Business**"), and any other entities that Paul and Rana used to carry out the Real Estate Business;

AND WHEREAS Paul and Rana agree that these Minutes of Settlement shall be interpreted in accordance with this underlying principle that they each own a 50% interest in the Trucking Business and the Real Estate Business and each share equally in all of the liabilities incurred in the ordinary course of the operation of the Trucking Business and the Real Estate Business as owners, directors or directing minds, as the case may be;

AND WHEREAS Paul and Rana represent that they each have acted in good faith and, where documents were required to be produced in respect to certain issues specified in these Minutes of Settlement, they have each produced all relevant documents, records and information in their possession or control that they believe relate to such issues, and "document" shall have the meaning as defined in rule 30.01 of the Rules of Civil Procedure;

AND WHEREAS Paul and Rana should have contributed equal approximate amounts of capital and moneys to the entities that comprise the Trucking Business and the Real Estate Business, both directly and indirectly, including through contributions of capital

and moneys made by their respective family members and any Affiliated parties, as defined in the *Business Corporations Act* (Ontario), RSO 1990, c B.16 ("**Affiliated Parties**");

AND WHEREAS Paul and Rana should have received, directly or indirectly, including through their respective family members or Affiliated Parties, equal distributions from the entities that comprise the Trucking Business and the Real Estate Business, including in terms of salary, dividends or other distributions;

AND WHEREAS to the extent that Paul or Rana directly or indirectly received an unequal distribution(s) that was subsequently used for the joint benefit of Paul and Rana (or their respective families or affiliated parties), such distributions shall be deemed to be treated as an equal distribution in proportion to the extent that it was used for the equal benefit of Paul and Rana;

AND WHEREAS the value of the services provided to the Trucking Business and the Real Estate Business by Paul and Rana (and their respective families) shall be assumed to be equal for the purpose of these Minutes of Settlement;

AND WHEREAS these Minutes of Settlement are designed to achieve an orderly sale of the Real Estate Business and the Trucking Business with the proceeds from such sales to be distributed to Paul and Rana in accordance with these Minutes of Settlement;

AND WHEREAS to achieve an orderly sale of the Real Estate Business and the Trucking Business as aforesaid, Paul and Rana (and their respective families) agree that these Minutes of Settlement and all transactions contemplated herein shall be kept confidential and not disclosed to any third parties except as required to perform the terms of these Minutes of Settlement and to achieve the best possible sale prices for the Real Estate Business and the Trucking Business in accordance with these Minutes of Settlement;

NOW THEREFORE in consideration of the terms of these Minutes of Settlement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Paul and Rana hereby agree, both in their personal capacities and in their capacity as the directing minds of each of the RGC entities that were named in the Application, hereby agree as follows:

1. For the purpose of these Minutes of Settlement, the recitals are true and form part of these Minutes of Settlement.
2. Within 3 days following the execution of these Minutes of Settlement, the Parties shall execute: i) the mutual release that is attached as **Schedule "A"** to these Minutes of Settlement; and ii) the consent to an order dismissing the Application without costs that is attached as **Schedule "B"** to these Minutes of Settlement, which mutual release and consent are to be held in escrow by the Parties' respective legal counsel pending the completion of all steps contemplated in these Minutes of Settlement.
3. 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. Any information to be exchanged pursuant to this paragraph shall be directed through written requests to be made by and to (as the case may be) the Parties' respective counsel. If the Parties dispute the relevance of the information requested in this section, they will work together in good faith, through counsel, to resolve the disagreement in a mutually agreeable manner. All information to be provided pursuant to this paragraph shall be provided forthwith unless the information is not readily available, in which case the Party to provide the information will advise in writing that the information is not readily available and will use best efforts to provide it as expeditiously as possible.
4. Paul, on the one hand, and Rana, on the other hand, shall each have a period of 30 days following the execution of these Minutes of Settlement (the "**Initial Review Period**") to review all information concerning RGC, the Trucking Business and the Real Estate Business in the possession or control of the Parties for the purpose of assessing whether the other (directly or indirectly) obtained an unequal benefit from either the Trucking Business or the Real Estate Business, or both, in the period

following January 1, 2011 arising from any of the transactions described in paragraphs 9(a), (b) and (c) below (an “**Unequal Benefit**”).

5. Within 20 days following the end of the Initial Review Period, the Parties shall exchange information requests in writing concerning events or circumstances regarding any suspected Unequal Benefit that may have benefited Paul or Rana (as the case may be), or their respective families or any Affiliated parties (the “**Information Requests**”).
6. Within 20 days following the exchange of the Information Requests, the Parties shall provide a written response that, for each alleged Unequal Benefit, either: i) acknowledges the existence of the Unequal Benefit; or ii) provides a basis for disputing the existence of the Unequal Benefit, together with all evidence in support of that position (the “**Responses to Information Requests**”).
7. [Intentionally Deleted]
8. Unless the steps contemplated in paragraphs 4, 5 and 6 result in an agreement between Paul and Rana on the aggregate amount of all Unequal Benefits, if any, favouring Paul or Rana (the “**Aggregate Unequal Benefit**”), then the Parties shall meet and confer within 20 days following the delivery of the Responses to Information Requests (the “**Preliminary Meeting**”) for the purpose of determining whether they can reach an agreement on the determination of the Aggregate Unequal Benefit, if any. If the Parties are unable to reach an agreement at the Preliminary Meeting, they will attend at a mediation before a mediator to be funded on a joint basis to try to reach an agreement on any Aggregate Unequal Benefit. If mediation is unsuccessful, the Parties shall appoint a nationally recognized independent accounting firm (the “**Independent Accountant**”) to determine the Aggregate Unequal Benefit, if any, but if the Parties are unable to agree on the appointment of an Independent Accountant, an Arbitrator shall determine the Aggregate Unequal Benefit, if any, pursuant to the terms of these Minutes of Settlement.

9. The Independent Accountant or Arbitrator, as the case may be, shall work with the Parties to determine a fair and efficient process for making the determinations set out below in this paragraph 9. If the Parties are unable to agree on a process, the process shall be directed by the Independent Accountant or Arbitrator, which, in his or her discretion, allows him or her to fairly:
- a) Determine the amounts that were paid or contributed by Paul, directly or indirectly, including through his respective family members, or Affiliated Parties, into the Trucking Business and the Real Estate Business in the period commencing on January 1, 2011 and the amounts that were paid or contributed by Rana, directly or indirectly, including through his respective family members or Affiliated Parties, into the Trucking Business and the Real Estate Business in the period commencing on January 1, 2011, provided that the amounts for determination shall also include any contributions to the purchase and equity of the Sismet Road property notwithstanding that they occurred prior to January 1, 2011 (the “**Contributions**”);
 - i. For greater clarity and to narrow the issues for which an Unequal Benefit may be asserted, the Parties agree as follows:
 - 1. The only claim for an Unequal Benefit that may be asserted in respect of the Real Estate Business is a claim by Rana deriving from his assertion that he personally contributed more monies than Paul contributed (i.e., up to a maximum of \$500,000) to the purchase of the property known municipally as 1725 Sismet Road, Mississauga, Ontario (the “**Sismet Property**”) and that Paul did not contribute any funds personally to the purchase of the Sismet Property. For example, if the Parties agree or the Arbitrator accepts, Rana’s position that he made an unmatched personal contribution in the amount of \$500,000, this would correspond to approximately 15.385% of the \$3.25 million purchase price of the Sismet Property. On this basis, Rana reserves his right, based on the documents included at

Schedule "C" to these Minutes of Settlement, to assert that he is entitled to a credit in the Aggregate Unequal Benefit Analysis in the amount of \$953,870, being an amount that is 15.385% of the \$6.2 million in proceeds that were generated from the sale of the Sismet Property. Rana further reserves his right to assert any similar argument in the event that the Parties agree or the Arbitrator determines, that Rana made an unmatched personal contribution in an amount that is less than \$500,000.

2. The Parties acknowledge that Paul rejects Rana's assertion regarding his unequal contribution to the Sismet Property and that Paul reserves all rights to argue that he and Rana both made equal monetary contributions to the purchase of the Sismet Property based on the documents attached hereto as **Schedule "D"**.
3. The Parties further acknowledge that the Parties have relied on the particulars of sub-paragraphs 9(a)(i) 1 and 9(a)(i) 2 above as being accurate as a condition to agreeing to these Minutes of Settlement and accordingly the Parties represent that they have acted in good faith in attempting to disclose the full extent of their personal contributions to the Sismet Property.
4. While the Parties shall not be prevented from relying on documents not disclosed in Schedule C or Schedule D to these Minutes of Settlement in support of their positions with respect to the Sismet Property, the Party or Parties seeking to do so bears the onus to justify in writing with supporting evidence why: (a) such documentation was not disclosed in Schedule C or Schedule D to these Minutes of Settlement; (b) the omission was made in good faith and the result of inadvertence; and (c) in the event this issue must be resolved before the Arbitrator, the Arbitrator shall only give credit for an undisclosed personal

contribution supported by a previously undisclosed document if he or she is satisfied that doing so is fair as between the Parties and consistent with the principles set out in these Minutes of Settlement. Nothing in this sub-paragraph or these Minutes of Settlement more generally shall allow Rana to rely upon unmatched personal contributions totalling more than \$500,000 or allow Paul to claim an Unequal Benefit in respect of the Sismet Property.

5. The Parties hereby acknowledge that the only claim for an Unequal Benefit that will be asserted in respect of the Real Estate Business is the claim by Rana described in paragraph 9(a)(i)(1) above and that no claim for an Unequal Benefit will be asserted by either Party in respect of the other Properties, as described in paragraph 11 below.
 - b) Determine the amounts, in cash or otherwise, that were paid into or out of the Trucking Business and the Real Estate Business at the cost of or for the benefit of each of Rana and Paul, directly or indirectly, including through their respective family members, agents, friends or Affiliated Parties in the period following January 1, 2011 (the "**Personal Payments**");
 - c) Determine the existence and amounts, if any, of any transactions, in cash or otherwise, made outside of the ordinary course of the Trucking Business and the Real Estate Business in the period following January 1, 2011 and the extent to which these Other Transactions were made for the benefit of Rana or Paul, directly or indirectly, including through their respective family members, agents, friends or Affiliated Parties ("**Other Transactions**"). For greater certainty, the acquisition or purchase of all real or personal property located in India, as identified in the list of properties attached as **Schedule "E"** to these Minutes of Settlement (the "**India Properties**"), held individually or jointly by or for the benefit of Rana and Paul shall be included in Other

Transactions, subject to the following guidelines, which are intended to simplify any dispute in this regard:

- i. The Parties acknowledge that they have each disclosed what they allege to be the amount of their personal contributions to the India Properties, with Paul disclosing his alleged personal contributions in the email from A. Kreaden to D. Mende, dated September 14, 2018 at 5:31 p.m., and Rana disclosing his alleged personal contributions in the email from N. Petkov to A. Kreaden dated September 17, 2018 at 10:35 p.m. (together, the “**Emails**”). Copies of the Emails are attached hereto as **Schedule “F”**.
- ii. The Parties agree that they reserve their rights to challenge each other’s respective positions on this issue for the purpose of claiming an Unequal Benefit.
- iii. The Parties further acknowledge that they have relied on the content of the respective Emails as being accurate as a condition to agreeing to these Minutes of Settlement and accordingly the Parties each agree and represent that they have acted in good faith in attempting to disclose the full extent of their personal contributions to the India Properties in the respective Emails.
- iv. While the Parties shall not be prevented from asserting that they made some other personal contribution to the India Properties that was not disclosed in the Emails, in order to do so, the Party or Parties seeking to do so bears the onus to justify in writing with supporting evidence why: (a) that contribution was not disclosed in the Emails; (b) the omission was made in good faith and the result of inadvertence; and (c) in the event this issue must be resolved before the Arbitrator, the Arbitrator shall only give credit for an undisclosed personal contribution if he or she is satisfied that doing so is fair as between the

Parties and consistent with the principles set out in these Minutes of Settlement.

- d) Pursuant to the principles set forth in these Minutes of Settlement, determine the sum of the Contributions, Personal Payments and Other Transactions that are attributed to each of Paul and Rana, directly or indirectly, including through their respective family members, agents, friends or Affiliated Parties, and the Aggregate Unequal Benefit, if any;
- e) Be paid jointly by Paul and Rana, but shall also have the ability to determine and award these costs, and any other costs associated with the process contemplated in this paragraph 9 of these Minutes of Settlement, to either Party based on the principles set out in rule 57.01 of Ontario's *Rules of Civil Procedure*, subject to the modification that the Arbitrator and/or Independent Accountant is encouraged to award full indemnity costs for any alleged Unequal Benefit that is asserted without reasonable corroborating documentary evidence;

Broker for the Sale of Trucking Business

10. Within 14 days following the execution of these Minutes of Settlement, Paul and Rana shall each provide a list of 3 proposed brokers and/or investment bankers with experience in the purchase and sale of trucking or related businesses to be considered to assist with the marketing and sale of the Trucking Business, following which the Parties shall, acting in good faith and in a commercially reasonable manner, use best efforts to agree on the appointment of one or more brokers and/or investment bankers (the "**Banker**"). If the Parties are unable to reach an agreement in this regard, the Banker shall be chosen by an Arbitrator pursuant to paragraph 22 of these Minutes of Settlement. Paul and Rana shall at all times act in a commercially reasonable manner in consulting with the Banker in connection with all offers received for the purpose of completing a sale of the Trucking Business as contemplated in these Minutes of Settlement.

Listing Broker for the Sale of Real Estate Assets

11. Within 14 days following the execution of these Minutes of Settlement, Paul and Rana shall, acting in good faith and in a commercially reasonable manner, use best efforts to agree on the appointment of a listing broker or brokers or if no such agreement can be reached, then the listing broker shall be appointed by an Arbitrator pursuant to paragraph 22 (the "**Listing Broker**") for the purpose of marketing and selling all of the following properties at their fair market values:

- a) The property municipally known as 7456 McLean Road West, Puslinch, Ontario;
- b) The property municipally known as Concession 7, Rear Pt Lot 25 RP, 61R7239 Parts 1 & 2, Puslinch, Ontario; and
- c) The property municipally known as Lot 2 Royal Windsor Drive, Oakville, Ontario L6J 4ZS.

(collectively, the "**Properties**" and each a "**Property**")

12. Paul and Rana shall at all times act in a commercially reasonable manner in consulting with the Listing Broker in connection with all offers received and for the purpose of completing sales of the Properties as contemplated in these Minutes of Settlement.

Sale of the Trucking Business

13. The Parties shall use commercially reasonable efforts to work with the Banker with a view to selling the Trucking Business at its fair market value and in a manner that is as tax efficient as is reasonably possible, which sale process shall proceed in parallel to the process relating to the resolution of any Unequal Benefits that is contemplated above.
14. The Banker shall only solicit and consider offers from a *bona fide* third party at arm's length to any of Paul, Rana, their family members and any Affiliate thereof (the

“Third Party”) that offers to purchase all of the Trucking Business for cash on commercially reasonable terms and conditions (a “Trucking Offer”).

15. If the Banker receives and recommends a Trucking Offer from a Third Party (a “Recommended Trucking Offer”), within 5 months of the date the Banker is appointed, that complies with the third party sale principles set forth in paragraph 20 (the “Third Party Sale Principles”) and:
 - a) both Parties reject such Recommended Trucking Offer, then the Parties shall not proceed with such Recommended Trucking Offer; or
 - b) both Parties accept the Recommended Trucking Offer, then the Parties shall use commercially reasonable efforts to complete the sale of the Trucking Business in accordance with the Recommended Trucking Offer;
16. If no Recommended Trucking Offer is received, or no Recommended Trucking Offer is accepted by the Parties within 5 months of the date the Banker is appointed, the Parties shall have 30 days to meet and confer and use best efforts to agree on how to proceed. In the absence of an agreement, the Parties shall proceed with the orderly liquidation of the Trucking Business in a manner that maximizes the Parties’ joint interest in profiting from any such liquidation, with the liquidated proceeds to be split equally amongst the Parties, subject to any Unequal Benefits. If the Parties are unable to agree on a process for conducting the liquidation contemplated in this paragraph, they shall appoint a mediator upon the conclusion of the 30 day period to assist them in agreeing to a liquidation process that is fair and reasonable to both Parties.

Sale of the Real Estate Business

17. The Parties shall use commercially reasonable efforts to work with the Listing Broker with a view to selling the Properties that comprise the Real Estate Business at fair market value and in a manner that is as tax efficient as is reasonably possible, which sale process shall proceed in parallel to the process relating to the resolution of any Unequal Benefits that is contemplated above.

18. The Listing Broker shall only solicit and consider offers from a Third Party that offers to purchase one or more of the Properties for cash on commercially reasonable terms and conditions (a “**Real Estate Offer**”).
19. If the Listing Broker receives a Real Estate Offer from a Third Party that complies with the Third Party Sale Principles and that the Listing Broker recommends to the Parties (a “**Recommended Real Estate Offer**”) and:
 - a) both Parties reject such Recommended Real Estate Offer, then the Parties shall not proceed with such Recommended Real Estate Offer; or
 - b) both Parties accept the Recommended Real Estate Offer, then the Parties shall use commercially reasonable efforts to complete the sale of the Property or Properties in accordance with the Recommended Real Estate Offer; or
 - c) one Party accepts the Recommended Real Estate Offer and another Party rejects the Recommended Real Estate Offer, then the Party rejecting the Recommended Real Estate Offer shall, at the rejecting Party’s option, proceed with any of the following alternatives:
 - i. purchase the Property or Properties that is the subject of a Recommended Real Estate Offer on the terms of the Recommended Real Estate Offer and in accordance with the buyout principles set out in paragraph 21 below (the “**Buyout Principles**”);
 - ii. purchase the shares of the other Party in the relevant RGC entity or entities owning and operating the Property or Properties that is the subject matter of the Recommended Real Estate Offer for their fair market value based on the terms of the Recommended Real Estate Offer (which, failing agreement of the Parties, shall be determined by the Arbitrator), on terms equivalent to the Recommended Real Estate Offer and in accordance with the Buyout Principles; or

- iii. challenge the Recommended Real Estate Offer in accordance with the following procedure:
1. within 48 hours of being advised in writing that the other Party wishes to accept the Recommended Real Estate Offer, the Party who does not wish to accept it shall provide in writing the reason or reason why the Recommended Real Estate Offer should not be accepted, which notice shall include all supporting evidence in support of its position (the “**Moving Submissions**”);
 2. if the other Party still desires to accept the Recommended Real Estate Offer, he shall be permitted, but not required, to provide responding submissions within 24 hours of receipt of the Moving Submissions (the “**Responding Submissions**”);
 3. Following the delivery of the Responding Submissions (if any), the Arbitrator shall act as quickly as possible to either: (a) determine whether he or she is able to make a determination on whether the Recommended Real Estate Offer ought to be accepted based on the goals of these Minutes of Settlement, in which case the Arbitrator shall make that determination; or (b) advise the Parties that a hearing is required to determine whether the Real Estate Offer ought to be accepted based on the goals of these Minutes of Settlement, which hearing will be confined to the submissions of counsel for the Parties and may be held by teleconference or in person, as directed by the Arbitrator;
 4. If the Arbitrator finds that the Recommended Real Estate Offer is in keeping with the goals of these Minutes of Settlement and ought to be accepted, the sale shall proceed. If the Arbitrator finds that the Recommended Real Estate Offer is not in keeping

with the goals of these Minutes of Settlement and should not be accepted, the sale shall not proceed.

Third Party Sale Principles

20. A transaction involving a sale of all or part of the Real Estate Business or all of the Trucking Business to a Third Party shall comply with the following principles:
- a) the purchase and sale shall be on commercially reasonable terms for a transaction of such nature, and will be to an arm's length party that is not Affiliated with either of the Parties;
 - b) the proceeds from the sale of any item sold pursuant to these Minutes of Settlement shall be split equally between the Parties after first accounting for any Aggregate Unequal Benefit;
 - c) the terms shall not personally favour or detriment one Party over the other in any material respect unless there is a commercially reasonable reason for same, it being understood that an offer in respect of the Trucking Business may contain a requirement that either Paul or Rana or both provide transitional services for a period post-closing on commercially reasonable terms;
 - d) to the extent that either Paul or Rana has given a personal guarantee in respect of, and for the benefit of, the sold business, the sale shall require that such personal guarantee be discharged on or before closing;
 - e) if the purchase and sale involves the sale of assets, then the RGC entity or entities that receive the proceeds of sale shall thereafter be wound up and dissolved and:
 - i. a Party entitled to an equalization payment on account of an Aggregate Unequal Benefit shall receive distributions from the wind up to satisfy same; and

- ii. once the Aggregate Unequal Benefit is satisfied, remaining assets shall be distributed equally between Rana and Paul;
- f) if the purchase and sale involves the sale of shares, then:
 - i. a Party entitled to an equalization payment on account of an Aggregate Unequal Benefit shall receive proceeds from the sale to satisfy same; and
 - ii. once the Aggregate Unequal Benefit is satisfied, then the remaining proceeds shall be allocated equally between Rana and Paul; and
- g) in the event that the Aggregate Unequal Benefit has not been determined at the time of sale, proceeds from the sale or distribution requisite to satisfy the reasonable positions of the Parties claiming an Aggregate Unequal Benefit at such time shall be held in escrow by the Arbitrator pending resolution of the Aggregate Unequal Benefit.

Buyout Principles

21. A transaction involving a purchase by one Party (the "**Purchaser**") of all or part of the Real Estate Business from the other Party (the "**Vendor**") shall comply with the following principles:
- a) The Vendor and his family shall resign from any positions with any company that is sold in a sale of the Real Estate Business (a "**Sold Company**") or sold Property, and there shall be no obligation to pay any termination or severance thereto;
 - b) To the extent that the Vendor has given a personal guarantee in respect of, and for the benefit of, any Sold Company or sold Property, the sale shall require that such guarantee be discharged on or before closing;
 - c) If the Vendor, his family or any Affiliate thereof owes the Sold Company or sold Property any amounts which have not been considered in the Aggregate

Unequal Benefit determination, then such amounts shall be paid on or prior to closing;

- d) If the purchase and sale involves the sale of the Property, then
- i. the RGC entity or entities shall sell the Property free and clear of any encumbrances or rights of others; and
 - ii. the RGC entity or entities that receive the proceeds of sale shall thereafter be wound up and dissolved and:
 1. a Party entitled to an equalization payment on account of an Aggregate Unequal Benefit shall receive distributions from the wind up to satisfy same; and
 2. once the Aggregate Unequal Benefit is satisfied, remaining assets shall be distributed equally between Rana and Paul;
 - iii. Each of Paul and Rana shall indemnify the other for any damages, losses, costs, and expenses suffered or incurred in respect of any bona fide third party claim concerning such sold RGC entity or entities, provided such was incurred in the ordinary course of the operation of that RGC entity or entities, on the basis that each agree that they share equally in all of the liabilities incurred in the ordinary course of the operation of the Real Estate Business as owners, directors or directing minds, as the case may be;
 - iv. The purchase and sale shall include such terms and documentation as may be reasonably requested by Paul or Rana for a transaction of this nature;
- e) If the purchase and sale involves the sale of shares of the Sold Company, then:
- i. the Vendor shall sell shares free and clear of any and all encumbrances or rights of others;

- ii. a Party entitled to an equalization payment on account of an Aggregate Unequal Benefit shall receive a credit on the purchase price proceeds reflecting such Aggregate Unequal Benefit;
 - iii. the Vendor shall indemnify the Purchaser and the Sold Company or Sold Companies for any damages, losses, costs and expenses suffered or incurred by the Sold Company or Companies in respect of any bona fide third party claim against such Sold Company or Companies entity or entities pertaining to facts, matters or circumstances arising as a result of any fraud or wilful misconduct of the Vendor; and
 - iv. the Vendor shall indemnify the Purchaser and the Sold Company or Companies for 50% of any damages, costs or expenses suffered or incurred by the Sold Company or Companies in respect of any bona fide third party claim against such Sold Company or Companies pertaining to facts, matters or circumstances arising prior to the closing, save for any fraud or wilful misconduct of the Purchaser.; and
 - v. the purchase and sale shall include such terms and documentation as may be reasonably requested by the Purchaser or the Vendor for a transaction of this nature.
- f) In the event that the Aggregate Unequal Benefit has not be determined at the time of sale, then proceeds from the sale or distribution requisite to satisfy the reasonable positions of the Parties claiming an Aggregate Unequal Benefit at such time shall be held in escrow pending resolution of the Aggregate Unequal Benefit.

Miscellaneous

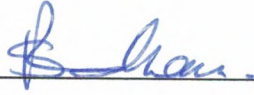
22. Paul and Rana each agree that any dispute arising in respect of the completion or implementation of these Minutes of Settlement, then Paul and Rana agree to appoint an arbitrator from among the resident or member arbitrators associated with Arbitration Place in Toronto or alternatively any other person who is a retired judge

of the Ontario Superior Court of Justice or Ontario Court of Appeal (the “**Arbitrator**”) to determine any such dispute acting as arbitrator pursuant to the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17 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.

23. These Minutes of Settlement are governed in accordance with the laws of the Province of Ontario.
24. These Minutes of Settlement, together with any documents explicitly referenced herein constitute the entire understanding and agreement between the Parties in connection with the subject matter hereof, and supersedes all prior agreements, understandings, negotiations and discussions between the Parties, whether oral or written. However, these Minutes of Settlement may be modified on consent of the Parties or by an order of the Arbitrator if the Arbitrator is satisfied that any such amendment is necessary to give effect to the underlying principles of these Minutes of Settlement, as set out in the preamble.
25. The Parties shall each bear their respective legal costs associated with the drafting, execution, and implementation of these Minutes of Settlement.
26. The Parties shall agree, acting reasonably, on all disclosures to be made to third parties regarding the matters covered in these Minutes of Settlement to ensure that the sales of the Trucking Business and the Real Estate Business proceed as efficiently as possible and to achieve the best possible sale prices for the Real Estate Business and the Trucking Business in accordance with these Minutes of Settlement;
27. The Parties agree that these Minutes of Settlement, and all schedules hereto, may be signed in counterparts by original or electronic transmission and will be valid and binding even though the Parties sign separate copies of it.
28. The Parties agree that they fully understand the terms of these Minutes of Settlement and have had the opportunity to receive independent legal advice.

[Remainder of page intentionally left blank]

DATED at GEORGETOWN, ONT, this 1st day of October, 2018.



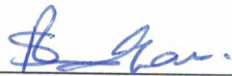
Swinderpal Singh Randhawa

Rana Partap Singh Randhawa

Proex Logistics Inc.

Guru Logistics Inc.

By:



Swinderpal Singh Randhawa

By:




Swinderpal Singh Randhawa


Rana Partap Singh Randhawa

Rana Partap Singh Randhawa

**1542300 Ontario Inc. (o/a ASR
Transportation)**

2221589 Ontario Inc.

By: 
Swinderpal Singh Randhawa


By: 
Swinderpal Singh Randhawa


Rana Partap Singh Randhawa

Rana Partap Singh Randhawa

2435963 Ontario Inc.

Noor Randhawa Corp.

By: 
Swinderpal Singh Randhawa


By: 
Swinderpal Singh Randhawa


Rana Partap Singh Randhawa

Rana Partap Singh Randhawa

Superstar Transport Ltd.

R.S. International Carriers Inc.

By: 
Swinderpal Singh Randhawa

By: 
Swinderpal Singh Randhawa


Rana Partap Singh Randhawa

Rana Partap Singh Randhawa

Subeet Carriers Inc.

Superstar Logistics Inc.

By: 
Swinderpal Singh Randhawa


By: 
Swinderpal Singh Randhawa


Rana Partap Singh Randhawa

Rana Partap Singh Randhawa

Continental Truck Services Inc.

ASR Transportation Inc.


By: 
Swinderpal Singh Randhawa

By: 
Swinderpal Singh Randhawa

Rana Partap Singh Randhawa

Rana Partap Singh Randhawa

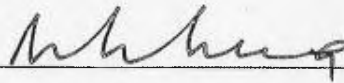
ASR Warehousing and Logistics Inc.

By: 
Swinderpal Singh Randhawa

Rana Partap Singh Randhawa

DATED at _____, this 15th day of October, 2018.

Swinderpal Singh Randhawa



Rana Partap Singh Randhawa

Proex Logistics Inc.

Guru Logistics Inc.

By:

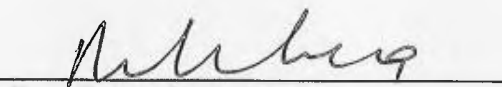
By:

Swinderpal Singh Randhawa

Swinderpal Singh Randhawa



Rana Partap Singh Randhawa



Rana Partap Singh Randhawa

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Transportation)


2221589 Ontario Inc.

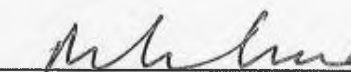
By:

By:

Swinderpal Singh Randhawa

Swinderpal Singh Randhawa


Rana Partap Singh Randhawa


Rana Partap Singh Randhawa

2435963 Ontario Inc.


Noor Randhawa Corp.


By:

By:

Swinderpal Singh Randhawa

Swinderpal Singh Randhawa


Rana Partap Singh Randhawa


Rana Partap Singh Randhawa

Superstar Transport Ltd.


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By:

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Swinderpal Singh Randhawa

Swinderpal Singh Randhawa


Rana Partap Singh Randhawa


Rana Partap Singh Randhawa

Subeet Carriers Inc.

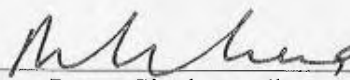
Superstar Logistics Inc.


By:

By:

Swinderpal Singh Randhawa

Swinderpal Singh Randhawa


Rana Partap Singh Randhawa


Rana Partap Singh Randhawa

Continental Truck Services Inc.


ASR Transportation Inc.

By:


By:

Swinderpal Singh Randhawa

Swinderpal Singh Randhawa



Rana Partap Singh Randhawa

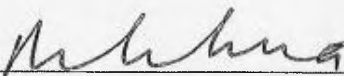


Rana Partap Singh Randhawa

ASR Warehousing and Logistics Inc.

By:

Swinderpal Singh Randhawa



Rana Partap Singh Randhawa

APPENDIX “F”
[ATTACHED]

MINUTES OF SETTLEMENT

WHEREAS the parties previously entered into minutes of settlement dated October 1st, 2018 (the "**October Minutes of Settlement**");

AND WHEREAS capitalized terms not otherwise defined herein have the meanings ascribed to them in the October Minutes of Settlement;

AND WHEREAS the Parties have entered into these minutes of settlement (the "**Unequal Benefits Minutes of Settlement**") to resolve all issues relating to the Aggregated Unequal Benefit analysis described in paragraphs 4 and 9 of the October Minutes of Settlement;

AND WHEREAS the Parties have already caused the RGC entities to sell the properties that are owned by the Real Estate Business, the proceeds of which are currently being held in trust pursuant to the October Minutes of Settlement;

AND WHEREAS these Unequal Benefits Minutes of Settlement should be read in conjunction with the October Minutes of Settlement;

NOW THEREFORE in consideration of the terms of these Unequal Benefits Minutes of Settlement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Paul and Rana hereby agree, both in their personal capacities and in their capacity as the directing minds of each of the RGC entities that were named in the Application, as follows:

1. Within 30 days of the execution of these Unequal Benefit Minutes of Settlement, Rana shall pay Paul \$1,035,000 inclusive of HST, interest, and all claims for costs of any kind existing up to now, (the "**UB Settlement Payment**"), which amount is to be paid to Stikeman Elliott LLP in trust, either by cheque or wire transfer. However, if the Parties have acted in good faith in an effort to try to obtain tax information relating to the sale of the Properties from MDP and there have been reasonable delays associated with this process, the 30 day period may be extended by further agreement of the Parties.
2. Within 30 days of the execution of these Unequal Benefits Minutes of Settlement, Rana shall cause RGC to pay Paul the amount to equalize the salary payments that were made from RGC to Rana's family in the period between September 1, 2018 and the present, which amount is to be agreed to by the Parties, acting reasonably and in good faith.
3. From the date of the execution of these Unequal Benefits Minutes of Settlement and onward, the Parties agree that they, and their respective families, shall each receive equal payments from RGC, provided that all liabilities as they generally come due of the RGC entities to third parties, such as all obligations to the Canada Revenue Agency and its provincial equivalent, are honoured on time;
4. Within 12 months of the execution of these Unequal Benefits Minutes of Settlement, the Parties shall take the following steps in respect of the Indi



properties that are listed in the schedule attached hereto as **Schedule "A"** (the **"India Schedule"**):

- a. Rana shall: i) transfer to Paul Rana's interest in the property listed in line 3 of the India Schedule; ii) cause Sukhdeep to transfer to Rajpreet Sukhdeep's interest in the property listed in line 3 of the India Schedule; and iii) transfer to Paul Rana's interest in the "joint house" listed in line 10 of the India Schedule;
 - b. Paul shall transfer to Rana Paul's interest in the property listed in line 5 of the India Schedule;
 - c. As a result of the transfers contemplated in paragraphs 4(a) and (b), neither Rana nor his family will have any interest in the properties listed in line 3 or 10 of the India Schedule, and neither Paul nor his family will have any interest in the properties listed in lines 4, 5, 6 and 7 of the India Schedule;
 - d. The Parties agree to act reasonably and in good faith to take all steps necessary to complete the transactions contemplated in this paragraph, and will consider reasonable alternatives presented by each other to achieve the most reasonably expeditious process to effect the transfers contemplated in this paragraph;
 - e. In the period pending the transfers contemplated in this paragraph, neither Party shall have access to the properties to be transferred from that party, with the only exception being that Rana shall be permitted to visit the property identified in line 10 of the India Schedule to retrieve his personal items in accordance to a protocol to be agreed upon by the Parties, through counsel.
 - f. The administrative costs of the transfers in in paragraphs 4(a) and (b) shall be paid equally between Paul and Rana.
5. Within 14 days of the execution of these Unequal Benefits Minutes of Settlement, Rana shall cause RGC to provide Paul with access to:
- a. the fuel portals identified as "TCH/Pilot/Flying J" and "Petro-Pass";
 - b. "Trans Plus Fleet Manager Dispatch System";
 - c. "Border Connect";
 - d. "Shaw Tracking GPS Communication".
6. The Parties shall continue to exchange information on the 15th day of every month, as previously ordered by the Arbitrator, with the exception that going forward this information shall include reports/documentation that is sufficient to enable Paul to monitor the petty cash that is used for RGC;
7. Three months from the date of these Unequal Benefits Minutes of Settlement, Rana shall cause RGC to provide Paul with a USB key that contains a complete



copy of the RGC Quickbooks account, and shall continue to provide an updated USB key with this information every three months thereafter;

8. The Parties agree that they will not cause RGC to be used for any Unequal Benefit going forward, including, but not limited to, using petty cash for personal benefit or using shareholder loans for personal benefit, unless as otherwise agreed to by the Parties in writing;
9. The Parties agree that these Unequal Benefits Minutes of Settlement are intended to and do resolve, in their entirety, the Aggregate Unequal Benefits issue, which includes, but is not limited to, any Unequal Benefit with regard to the India Properties, the Florida properties, the Sismet Property, and the cottage located at 428 Robins Point, Tay Township.
10. The Parties agree that Derry Millar shall mediate any disputes arising from these Unequal Benefits Minutes of Settlement or the October Minutes of Settlement, but in the absence of a resolution of any such dispute, the Arbitrator shall remain seized to resolve disputes in accordance with the October Minutes of Settlement.
11. The Parties agree that as they are "joint-owners" of 243, Noor and 222, (the **Real Estate Holdcos**) and they are each liable to ensure that the correct remittances are made on the gains resulting from the sale of the Properties to CRA. Accordingly, MDP will provide calculations, to be reviewed and approved by both Parties acting reasonably, of the appropriate instalment tax payments arising from the sale of each Property and same will be paid to CRA by the Parties from the funds currently held in trust, following which Stikeman Elliott LLP shall release the funds it holds in trust to Paul as a representative of the entities that sold the Properties and Dale and Lessmann LLP shall release the funds it holds in trust to Rana as a representative of the entities that sold the Properties, with the exception that \$1,035,000.00 that is being held in trust by Dale and Lessman LLP shall be paid to Paul on Rana's behalf in satisfaction of the obligation set out in section 1 of these Unequal Benefits Minutes of Settlement.
12. For the avoidance of doubt, the proper accounting of the proceeds from the sale of the Properties is for the Parties to determine and will be subject to the process described in paragraph 10 herein.
13. The Parties agree that the release contemplated in the October Minutes of Settlement shall continue to be held in escrow pending the sale of the Trucking Business.
14. The Parties agree that they will act in good faith to facilitate the sale of the Trucking Business as effectively and cost-efficiently as possible.
15. These Unequal Benefits Minutes of Settlement are governed in accordance with the laws of the Province of Ontario. To the extent that it is necessary for the local, regional or national laws of India to be applied to deal with a dispute regarding paragraph 4 herein, then the Arbitrator shall apply the local, regional or national laws of India to resolve the dispute regarding paragraph 4 of these Unequal Benefits Minutes of Settlement.





16. These Unequal Benefits Minutes of Settlement and the October Minutes of Settlement, together with any documents explicitly referenced in both constitute the entire understanding and agreement between the Parties in connection with the subject matter hereof, and supersedes all prior agreements, understandings, negotiations and discussions between the Parties, whether oral or written. However, these Unequal Benefits Minutes of Settlement may be modified on consent of the Parties or by an order of the Arbitrator if the Arbitrator is satisfied that any such amendment is necessary to give effect to the underlying principles of these Unequal Benefits Minutes of Settlement.
17. The Parties shall each bear their respective legal costs associated with the drafting, execution and, unless stated to the contrary herein, the implementation of these Unequal Benefits Minutes of Settlement.

Signature pages follow




DATED at Toronto, this 13th day of September, 2019.



Swinderpal Singh Randhawa

DATED at Toronto, this 13th day of September, 2019.



Rana Partap Singh Randhawa

DATED at Toronto, this 13th day of September, 2019.

Proex Logistics Inc.

Guru Logistics Inc.

By:

By:





Swinderpal Singh Randhawa Swinderpal Singh Randhawa





Rana Partap Singh Randhawa Rana Partap Singh Randhawa

1542300 Ontario Inc. (o/a ASR
Transportation)

2221589 Ontario Inc.

By:



By:



Swinderpal Singh Randhawa Swinderpal Singh Randhawa



Rana Partap Singh Randhawa Rana Partap Singh Randhawa

2435963 Ontario Inc.

Noor Randhawa Corp.

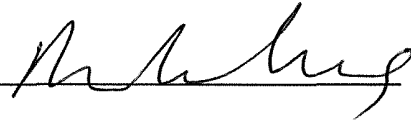
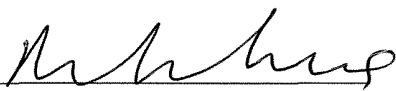
By:



By:



Swinderpal Singh Randhawa Swinderpal Singh Randhawa




Rana Partap Singh Randhawa Rana Partap Singh Randhawa


Superstar Transport Ltd.

R.S. International Carriers Inc.

By:

By:





Swinderpal Singh Randhawa Swinderpal Singh Randhawa





Rana Partap Singh Randhawa Rana Partap Singh Randhawa

Subeet Carriers Inc.

Superstar Logistics Inc.

By:

By:





Swinderpal Singh Randhawa Swinderpal Singh Randhawa






Rana Partap Singh Randhawa Rana Partap Singh Randhawa

Continental Truck services Inc.

ASR Transportation Inc.

By:

By:





Swinderpal Singh Randhawa Swinderpal Singh Randhawa





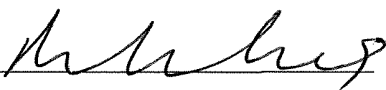
Rana Partap Singh Randhawa Rana Partap Singh Randhawa

ASR Warehousing and Logistics
Inc.

By:



Swinderpal Singh Randhawa



Rana Partap Singh Randhawa

Ownership Distribution (Acres) of Land Purchased in India Jointly

Land Parcel Location Details	Total size (Acres)	Paul Family Ownership		Rana Family Ownership	
		Swinderpal	Rajpreet	Rana	Sukhdeep
3 Village Tarpai, District Amritsar, Punjab	14.25	5.75	1.375	5.75	1.375
4 Village Kotla Saidan, District Amritsar, Punjab	4.5			4.5	
5 Village Kairon Nangal / Dhade (Hadaitpur), District Amritsar, Punjab	8.25	4.125		4.125	
6 G.T. Road, Jandiala, Amritsar	0.75			0.75	
7 Mian Pandher District, Amritsar	2.125				2.125
Total Acres	29.875	11.25		18.625	

10 The joint house in India has as estimated market value of \$165,000 (9 million rupees divided by exchange rate of 54.38).

Value of Land Parcels in India Purchased Jointly

Land Parcel Location Details	Total size (Acres)	Cost/Acre (Rupees at purchase date)	C = (A x B) / 54.38 INR	
			A	B
Village Tarpai, District Amritsar, Punjab	14.25	2677000		\$ 701,494
Village Kotla Saidan, District Amritsar, Punjab	4.5	3300000		273,078
Village Kairon Nangal / Dhade (Hadaitpur), District Amritsar, Punjab	8.25	2295000		348,175
G.T. Road, Jandiala, Amritsar	0.75	23673800		326,505
Mian Pandher District, Amritsar	2.125	2000000		78,154
Total Value of Land Parcels (excluding the India House)				\$ 1,727,406
Value of India House				\$ 165,000

APPENDIX “E”
[ATTACHED]

ONTARIO
SUPERIOR COURT OF JUSTICE

JUSTICE **WILTON-SIEGEL**) FRIDAY, THE 27th DAY OF APRIL, **2018** *WMS*
)



BETWEEN:

SWINDERPAL SINGH RANDHAWA

Applicant

- and -

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

Respondents

APPLICATION UNDER SECTIONS 161, 207 AND 241 OF THE *BUSINESS
CORPORATIONS ACT*, R.S.O. 1990, c. B.16 AS AMENDED AND SECTIONS 35 AND 39 OF
THE *PARTNERSHIPS ACT*, RSO 1990, c P.5

ORDER

ON READING the endorsement of the Honourable Justice Hainey dated March 12, 2018, and the consent of the Applicant, Swinderpal Singh Randhawa ("Paul"), and the Respondent, Rana Partap Singh Randhawa ("Rana", together with Paul the "Parties" and each separately a "Party");

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in Paul's affidavit, sworn March 22, 2018 (the "Affidavit").

2. **THIS COURT ORDERS** that the remaining steps in the Application shall be completed in accordance with the timetable that is attached as Schedule "A" to this Order.

3. **THIS COURT ORDERS** that Rana shall not interfere with the ability of Paul to access all staff employed by or associated with RGC for the purpose of carrying out the business of ProEx Logistics Inc., Guru Logistics Inc., Noor Randhawa Corp., and 2435963 Ontario Inc., pending a final decision in the Application, provided that Paul shall be limited to accessing and contacting such staff by e-mail and telephone only and that Paul shall not enter or be present at the RGC Office. For greater clarity, nothing in this paragraph prevents Paul from meeting in person with drivers employed by or associated with ProEx Logistics Inc., Guru Logistics Inc., Noor Randhawa Corp., and 2435963 Ontario Inc., provided such meetings do not occur at the RGC Office.

4. **THIS COURT ORDERS** that Rana shall, if applicable, rescind or revoke any instructions that have been made to staff employed by or associated with RGC which are contrary to paragraph 3 of this Order.

5. **THIS COURT ORDERS** that Paul shall not interfere with the operations, business and economic relations of ASR pending a final decision in the Application, or a further order of this Court.

6. **THIS COURT ORDERS** that Rana shall not fundamentally change the financial operation of RGC without Paul's written consent, including, but not limited to, by causing ASR to cease funding Guru on a monthly basis, pending a final decision in the Application.

7. **THIS COURT ORDERS** that Rana shall cause ASR to fund Guru in the amount of \$7,112.00 each month, pending an agreement of the Parties or a further order of this Court.

8. **THIS COURT ORDERS** that neither of the Parties shall make any disparaging, defamatory or otherwise negative statements about the other Party, including with respect to their involvement and ownership interest in RGC, pending a final decision in the Application.

9. **THIS COURT ORDERS** that neither of the Parties shall, directly or indirectly, sell, transfer, or otherwise dispose of any of the real estate properties owned by RGC as described in the Affidavit (the "**Properties**"), or any interests RGC holds in the Properties, without the express written consent of the other Party, pending a final decision in the Application.

10. **THIS COURT ORDERS** that neither of the Parties shall mortgage, use as collateral, or otherwise encumber any of the Properties without the express written consent of the other Party, pending a final decision in the Application.

11. **THIS COURT ORDERS** that neither of the Parties shall sell, transfer, or otherwise dispose of any of the assets owned by RGC, or transfer money out of any RGC bank account outside of the ordinary course of business without the express written consent of the other Party, pending a final decision in the Application.

12. **THIS COURT ORDERS** that neither of the Parties shall pay their respective legal fees related to the Application out of RGC funds, provided that this shall not restrict the Parties' right or ability to, in the ordinary course of business, receive salary or other remuneration or to withdraw funds from RGC bank accounts.

13. **THIS COURT ORDERS** that this Order is made without prejudice to the arguments and positions the Parties may advance on the hearing of the within Application.

14. **THIS COURT ORDERS** that the Parties shall bear their own costs in connection with this Order.

Alm Siegel
WILTON-SIEGEL J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 27 2018

PER / PAR:

MS

APPENDIX “F”
[ATTACHED]

IN THE MATTER OF AN ARBITRATION under the *Arbitration Act 1991*, SO 1991, C 1:

B E T W E E N :

SWINDERPAL SINGH RANDHAWA

Applicant

- and -

**RANA PARTAP SINGH RANDHAWA, PROEX LOGISTICS INC.,
GURU LOGISTICS INC., 1542300 ONTARIO INC. (OPERATED AS ASR
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

AWARD

(Hearing by Zoom Video Conference August 25 and 27, 2020)

Arbitrator: Larry Banack

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I. OVERVIEW

1. By Notice of Motion dated July 31, 2020, the Respondents, whom I will collectively refer to as “Rana”, seek the following relief:
 - a. An Order setting aside my Award and corresponding Order dated July 3, 2020 (the “*ex parte* Award and *ex parte* Order”);
 - b. The costs of this motion on a full indemnity basis, plus all applicable taxes; and
 - c. Such further and other relief as may be just.
2. This current motion is brought in response to the *ex parte* Order granting the Applicant, who I will refer to as “Paul,” *inter alia*:
 - a. A declaration that the criteria for the appointment of an inspector pursuant to sections 161-163 of the *Ontario Business Corporations Act*, RSO 1990, c B 16 (“OBCA”) have been met;
 - b. A declaration that the scope of the investigation requested to be made by the inspector and powers of the inspector be determined by return before me or the Superior Court of Justice; and
 - c. An order that Rana is restrained from directly or indirectly removing or making changes to the books and records of the Corporate Respondents (collectively known as “RGC Group”) or Motion Transport Ltd. (“Motion”), until such time as determined by the Superior Court of Justice or further order from me.
3. A copy of the *ex parte* Award and Order are attached to these reasons as Schedule “1”.
4. To understand the parties’ current circumstances, attention must be paid to their acrimonious history, much of which is contained in my Award dealing with the parties’ ‘Unequal Benefits,’ dated March 13, 2020 (the “March Award”) which is attached as Schedule “A” to the *ex parte* Award dated July 3, 2020.

II. BACKGROUND

5. The individual parties, Rana and Paul, are brothers, who have been in the process of divorcing their shared business interests since early 2018.
6. In March 2018, Paul commenced a Superior Court Application, wherein he sought, among other things, declarations that he and Rana owned and operated the RGC Group together as partners and/or 50-50 shareholders.
7. Justice Wilton-Siegel issued an Order on consent dated April 27, 2018, pursuant to which, among other things:
 - a. Rana is restrained from interfering with Paul's ability to access staff employed by or associated with RGC Group for the purpose of carrying out the business of ProEx Logistics Inc ("ProEx"), among other companies;
 - b. Paul is restrained from entering or being present at the RGC Group Office;
 - c. Paul is restrained from interfering with the operations, business, and economic relations of 1542300 Ontario Inc. (operated as ASR Transportation) ("ASR"); and
 - d. Both Paul and Rana are restrained from, directly or indirectly, selling, transferring or otherwise disposing of any of the assets owned by the RGC Group, including transferring money out of any RGC Group bank account, outside the ordinary course of business without express written consent of the other party.

The April 27, 2018 Consent Order of Justice Wilton-Siegel is attached to these reasons as Schedule 2.

8. Following Justice Wilton-Siegel's Order, the parties entered into Minutes of Settlement dated October 1, 2018 (the "October Minutes") to settle Paul's Superior Court Application.

9. According to the recitals, which paragraph 1 of the October Minutes confirms “are true and form part of these Minutes of Settlement”:

... the principle underlying [the October Minutes] is the recognition of the settlement agreement reached by Paul and Rana providing that they each own a 50% interest in each of: i) the trucking warehousing and logistics business that is owned and operated by Paul and Rana through some or all of ProEx, Guru, ASR, STL, Subeet, R.S., SLI, Continental, ASR Inc. (the “Trucking Business”) and any other entities that Paul and Rana used to carry out the Trucking Business, including but not limited to ASR Warehousing and Logistics Inc.; and ii) the real estate business in respect of the Properties (as defined below) that is owned and operated by Paul and Rana through some or all of 222, Noor and 243 (the “Real Estate Business”), and any other entities that Paul and Rana used to carry out the Real Estate Business...

[and]

... Paul and Rana agree that [the October Minutes] shall be interpreted in accordance with this underlying principle that they each own a 50% interest in the Trucking Business and the Real Estate Business and each share equally in all of the liabilities incurred in the ordinary course of the operation of the Trucking Business and the Real Estate Business as owners, directors or directing minds, as the case may be.

....

(My emphasis.)

10. The purpose of the October Minutes is described as follows:

...these Minutes of Settlement are designed to achieve an orderly sale of the Real Estate Business and Trucking Business...

11. The October Minutes also provide for the equal split of any sale proceeds from the Real Estate and Trucking Businesses, once sold, subject to an equalization of what the parties defined as any Aggregate Unequal Benefit.
12. In implementing the settlement, namely in effecting an orderly sale of the Real Estate and Trucking Businesses, the parties agreed to act in good faith in the exchange of information. Specifically, paragraph 3 of the October Minutes provides as follows:

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. Any information to be exchanged pursuant to this paragraph shall be directed through written requests to be made by and to (as the case may be) the Parties' respective counsel. If the Parties dispute the relevance of the information requested in this section, they will work together in good faith, through counsel, to resolve the disagreement in a mutually agreeable manner. All information to be provided pursuant to this paragraph shall be provided forthwith unless the information is not readily available, in which case the Party to provide the information will advise in writing that the information is not readily available and will use best efforts to provide it as expeditiously as possible.

(My emphasis.)

13. Shortly after execution of the October Minutes, I was jointly appointed as arbitrator in accordance with paragraph 22, which provides as follows:

22. 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 from among the resident or member arbitrators associated with Arbitration Place in Toronto or alternatively any other person who is a retired judge of the Ontario Superior Court of Justice or Ontario Court of Appeal (the "**Arbitrator**") to determine any such dispute acting as arbitrator pursuant to the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17 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.

14. There is no dispute that the parties have sold the Real Estate Business.
15. The issue of any Aggregate Unequal Benefit between the parties was not resolved until my Award dated March 13, 2020, nearly a year and a half after the execution of the October Minutes.
16. Now, two years after the October Minutes, the parties still have not effected the orderly sale of the Trucking Business.
17. Immediately following the execution of the October Minutes disputes arose concerning the disclosure of information.
18. Unfortunately, disclosure issues have resurfaced continually for the past two years.
19. Notwithstanding the explicitly agreed upon obligations of good faith, the parties have proven themselves to be incapable of working cooperatively with each other, through counsel or otherwise.

20. The parties have appeared before me in person, over teleconference, and video conference on numerous occasions. I have issued approximately a dozen Endorsements and Awards, some details of which are set out at paragraphs 17-51 of the March Award.
21. Given the relief sought on this motion by Rana, it is necessary to review the subject matter of this procedural history. In particular, the following is a brief summary of the parties' disputes to date, which have necessitated my intervention:
 - a. **Endorsement dated November 27, 2018** - In anticipation of a motion delivered by Paul arising out of the parties' inability to agree on how to finance the cash flow shortage facing ProEx, one of the trucking companies operated by Paul, and in consideration of the parties' obligations to exchange information in good faith, I asked the parties agree to a direction to be provided to RGC Group staff regarding documents and records to be provided to Paul in order to address the cash flow issue.
 - b. **Endorsement dated November 29, 2018** - Following the parties inability to agree to a consent direction, I issued an Endorsement for documentary disclosure, including, *inter alia*, disclosure from Rana to Paul of online banking records for ASR, 2221589 Ontario Inc. and Subeet Carriers Inc. as well as accounts receivable records, invoices transferred from the Transplus dispatch system, and records for the amounts of available lines of credits for all RGC Group entities.
 - c. **Consent Award dated December 5, 2018** - A Consent Award was issued resolving Paul's disclosure motion and providing, *inter alia*, that ongoing financial disclosure was to be provided by the RGC Group to Paul on the 15th day of each month. The parties also agreed that if there remained a cash flow shortage they could either (1) agree to fund the cash flow shortage from personal funds or (2) make submissions to the arbitrator for an appropriate remedy "including but not limited to the liquidation of any of the entities in RGC and the appointment of a receiver/manager to deal with the cash flow

shortage issue and to run RGC until the completion of the steps contemplated by the [October Minutes].”

- d. **Inspection and Costs Award dated December 12, 2018** - In response to Paul’s motion regarding the cash flow shortage of ProEx and related disclosure, Rana delivered a motion for unfettered and unconditional access to certain documents at Paul’s lawyers’ offices. Access to the records at Paul’s lawyers’ office was awarded, along with a reciprocal direction providing Paul with access to records being stored at the RGC Group office.
- e. **Endorsement dated April 23, 2019** - A timetable was set for the Unequal Benefits Arbitration. The parties agreed that Rana had received all of the documents requested from Paul, and dates were set by which Paul would request documents to inspect and Rana would make those documents available.
- f. **Endorsement dated July 23, 2019** - The parties were unable to move the matter forward as anticipated and agreed upon in April 2019, and Rana, who had appointed new counsel, raised a new request for documents from Paul, notwithstanding the representation by prior counsel that all requested documents had been received in April 2019. A revised timetable was set working toward a hearing for the Unequal Benefits Arbitration in September 2019.
- g. **Endorsement dated September 3, 2019** - A further scheduling conference call was held to move the matter forward toward the anticipated September hearing dates. Further hearing dates were added, and various evidentiary issues addressed.
- h. **Endorsement dated September 6, 2019** - A further conference call was held to address a motion delivered by Paul concerning the identification and production of documents after the delivery of Rana’s expert report. Following the conference call wherein much of the relief sought was agreed upon between counsel, the balance of Paul’s motion was dismissed due to it being

disproportionate and not in the interests of the parties nor necessary to achieve a fair and equitable outcome.

i. Unequal Benefits Minutes of Settlement dated September 13, 2019 -

Following a last-minute mediation, the parties entered into the Unequal Benefits Minutes of Settlement dated September 13, 2019 (“UB Minutes”). In respect of the parties’ disclosure obligations, and the sale of the Trucking Business, the UB Minutes provide as follows:

5. Within 14 days of the execution of these Unequal Benefits Minutes of Settlement, Rana shall cause RGC to provide Paul with access to:

- a. the fuel portals identified as "TCH/Pilot/Flying J" and "Petro-Pass";
- b. "Trans Plus Fleet Manager Dispatch System";
- c. "Border Connect";
- d. "Shaw Tracking GPS Communication".

6. The Parties shall continue to exchange information on the 15th day of every month, as previously ordered by the Arbitrator, with the exception that going forward this information shall include reports/documentation that is sufficient to enable Paul to monitor the petty cash that is used for RGC;

7. Three months from the date of these Unequal Benefits Minutes of Settlement, Rana shall cause RGC to provide Paul with a USB key that contains a complete copy of the RGC QuickBooks account, and shall continue to provide an updated USB key with this information every three months thereafter;

....

14. The Parties agree that they will act in good faith to facilitate the sale of the Trucking Business as effectively and cost-efficiently as possible.

...

j. Amended Endorsement dated January 19, 2019 - An Endorsement was issued to deal with Rana's access to a property in India that was dealt with in the UB Minutes. I note that prior to issuing my endorsement, the parties were requested to exchange proposed protocols to address the issue of Rana's access and despite the caution to avoid extreme positions, both parties delivered unduly aggressive positions.

k. Award dated March 13, 2020 - This March Award is attached as Schedule "A" to the *ex parte* Award. The narrow issue in the award was how to effect an unequal benefit payment from Rana to Paul. In the course of determining this issue, I describe the parties' procedural history and comment on the parties' ongoing inability to comply, in good faith, with their documentary disclosure obligations.

22. The parties defined their process and disclosure obligations in respect of their common business interests in both the October Minutes and the UB Minutes. The above noted Endorsements enforced the agreed upon obligations to implement the brothers' goal of achieving an orderly sale of the remaining Trucking Business all in the context of the constraints set out in the Consent Order of Justice Wilton-Siegel dated April 27, 2018.
23. The issue of the parties' inability to provide open and transparent disclosure and access to information is a long-standing theme between the parties. It is against this backdrop that the *ex parte* Order was issued.

24. On June 30, 2020, Paul delivered an extensive *ex parte* motion record, in excess of 1200 pages, which upon review I found justified the appointment of an inspector pursuant to section 161 of the OBCA. In the *ex parte* Award I concluded:

26. In particular, I find that there is evidence of a lack of transparency and disclosure from Rana to Paul in respect of the operations and financial standing of ASR.

27. Moreover, there is some evidence that Rana has been involved with a new entity, Motion Transport Ltd (“Motion”) which was incorporated by a third party in 2018 and to which he has apparently caused ASR to sell vehicles, either directly or indirectly through intermediaries since September 2018.

28. The corporate profile report for Motion suggests that its sole officer and director is a person purportedly known to Rana, but according to Mr. Colbourn’s investigation report, this individual has never been observed at the Motion offices or observed to be engaged in any activity related to Motion. It seems Motion may be operated by Rana’s son and operated out of locations leased by ASR.

29. There is further evidence that Motion has been servicing ASR clients, and using ASR drivers, vehicles and fuel for Motion’s benefit.

30. Coupled with the evidence of a lack of transparency through the denial of records to Paul, I am satisfied that there is an appearance of oppressive conduct that warrants the appointment of an inspector.

25. On July 6, 2020 Paul delivered the *ex parte* Award and Order to Rana, along with the motion record filed in support. The parties appeared before Justice Dietrich on July 7 and 9, 2020. By Endorsement dated July 17, 2020, Justice Dietrich adjourned Paul’s motion to allow Rana to bring the present motion to vary or set aside the *ex parte* Order.

26. The evidence is described in detail below. Suffice it to say that the parties exchanged contradictory affidavits in the present motion.
27. By consent of the parties, a hearing was held on August 25 and 27, 2020 via Zoom video conference. On August 25, 2020 each of the affiants were cross-examined in real time. On August 27, 2020, the parties delivered closing submissions.
28. I have carefully considered the very comprehensive evidentiary record and fulsome submissions. I find that Rana, as outlined below, does not satisfactorily respond in his filed material to the very clear disclosure issues that are characteristic of the parties' acrimonious history as evidenced by the above-mentioned Endorsements.
29. All of the parties' disputes, including the present motion, are in some way borne out of an unwillingness to provide sufficient information necessary to implement the sale of the Trucking Business in an open and transparent way, contrary to the parties' good faith obligations under the October Minutes and the UB Minutes.
30. Prior to considering the substance of the parties' dispute, two preliminary issues were raised by counsel that need to be addressed.

III. PRELIMINARY ISSUES

A. JURISDICTION ON THE PRESENT MOTION

31. At the outset of the hearing on August 25, 2020, I requested the parties to pointedly address my jurisdiction to review the *ex parte* Award and Order dated July 3, 2020 and to make submissions on the nature of that jurisdiction, if any.

1. *Rana*

32. Rana asserts, that the *ex parte* Order must be treated as interim, and his current motion is in essence a hearing *de novo*. To treat it otherwise, Rana argues, would be a breach of the principles of natural justice, as he was not provided notice of, and therefore was not

present at, Paul's *ex parte* motion. Rana relies on section 19 of the *Arbitration Act 1991*, SO 1991, c 17 ("Arbitration Act"), which the parties cannot contract out of.

33. Section 19 of the Arbitration Act provides as follows:

19 (1) In an arbitration, the parties shall be treated equally and fairly.

(2) Each party shall be given an opportunity to present a case and to respond to the other parties' cases.

34. According to Rana, not allowing him the opportunity to return before me to make submissions on the validity of the *ex parte* Order would violate section 19 of the Arbitration Act.

35. Rana also submits that I have the authority to review the *ex parte* Order pursuant to section 44(1)(b) of the Arbitration Act which provides:

44 (1) An arbitral tribunal may, on its own initiative within thirty days after making an award or at a party's request made within thirty days after receiving the award,

...

(b) amend the award so as to correct an injustice caused by an oversight on the part of the arbitral tribunal.

36. Relying on the decision of Justice Wilton-Siegel in *1210558 Ontario Inc v 1464255 Ontario Limited*, 2011 ONSC 5810 at paragraph 41, Rana asserts that it is for me, having inadvertently not included a come-back date in the *ex parte* Order, to now allow the parties to return before me to address the issue of the appointment of an inspector.

37. According to Rana, the language of the OBCA allowing for the appointment of an inspector *ex parte*, is insufficient to satisfy the principles of procedural fairness entitling him to respond to the evidence against him.

38. I deal with Rana's position that I lack jurisdiction to appoint an inspector pursuant to the OBCA and to grant Paul's injunctive relief, below.

2. Paul

39. According to Paul, there is no basis upon which I can review the *ex parte* Order on the grounds set out by Rana. Specifically, Paul notes that section 37 of the Arbitration Act provides that any Award binds the parties unless it is set aside under sections 45 or 46, neither of which are applicable.
40. Paul submits that pursuant to the October Minutes the parties contracted out of any rights of appeal provided by section 45 of the Arbitration Act. He further contends that the challenges available under section 46 must be brought before the Superior Court. Paul relies upon the language of the grounds for review in section 46, which in his submission make it clear that the arbitrator does not have jurisdiction under that provision. For example, section 46(1)(8) allows a court to set aside an award, where "an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias.",
41. Paul further argues that it would be inconsistent for Rana, on the one hand, to suggest that I have no jurisdiction to appoint an inspector because of the reference to "the court" in section 161 of the OBCA, but on the other hand contend that I have jurisdiction to set aside an *ex parte* Award or Order under section 46 of the Arbitration Act, which also refers to "the court".
42. According to Paul, nothing in the *ex parte* Order permits Rana to come back and now challenge the appointment of an inspector. Paul submits that to allow Rana the opportunity to argue the motion *de novo* essentially guts section 161 of the OBCA, and a party's ability to appoint an inspector *ex parte*, of any meaning.
43. Paul concedes that principles of natural justice and the language of the *ex parte* Order provide Rana with standing to request to set aside the injunction, because the injunctive relief restrains Rana's conduct. He denies there was any inadvertence in excluding a come-back date in the *ex parte* Order since it was only to remain in force "until such

time as is determined by the Superior Court of Justice or further order from me.” Paul maintains that this is equivalent to a come back date.

44. Unlike an injunction, the appointment of an inspector does not restrain Rana in any way and all the submissions Rana is currently making, according to Paul, could be made when the parties deal with costs following the inspector’s report.
45. In respect of Rana’s argument that section 44 of the Arbitration Act applies, Paul submits that Rana ought to be restricted to the relief sought in his Notice of Motion, which as drafted uses the language of setting aside the *ex parte* Award and Order, consistent with section 46 of the Arbitration Act (see *Apotex v Abbott Laboratories*, 2017 ONSC 1348 at paragraph 45).
46. Ultimately, however, Paul agrees to have this matter heard by me, but states that this is not a hearing *de novo*, but rather a review of the *ex parte* Order and Award on a reasonableness standard (see *Freedman v Freedman Holdings Inc*, 2020 ONSC 2692 at paragraphs 127-128).

3. Determination – Jurisdiction to review ex parte Award

47. Having considered the parties’ fulsome submissions and authorities in respect of my jurisdiction to hear Rana’s present motion, I conclude that I have the authority to receive evidence from Rana in respect of the propriety of the *ex parte* Award and Order.
48. First and foremost, while the *ex parte* Order does not contain a specific return date in respect of the appointment of an inspector, it clearly specifies at paragraph 3 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...”
49. By return motion before me, therefore, it is available to Rana to assert, as he has done, that no inspector can, or ought to, be appointed.

50. To conclude otherwise would violate the principles of procedural fairness.
51. I also agree that section 44(1)(b) provides me with the authority to hear the present motion. This provision allows me, on my own initiative or at the request of a party within 30 days of the *ex parte* Award, to amend the Award to correct an injustice caused by an oversight. In this case, I have concluded that Rana ought to have the ability to challenge the evidence led against him in support of the *ex parte* Award.
52. I conclude that this opportunity is provided to him on the plain language of the *ex parte* Order and in particular paragraphs 3 and 4 (the latter of which concerns the injunctive relief). To the extent that I am mistaken, and paragraph 3 is insufficient, section 44(1)(b) allows me to correct an oversight to include a specific return date and consider the issues raised in the present motion.
53. In respect of whether Rana's present motion is a hearing *de novo* or a review of the *ex parte* Award on a reasonableness standard, I conclude that it does not matter, as applying either standard it is clear that Rana's motion must fail. I have accepted the extensive records delivered by Rana, and after a comprehensive review in light of the whole record, maintain my conclusion that, among other things, on either a *de novo* or reasonableness review basis that there exist grounds for the appointment of an inspector under the OBCA. As is set out below, I also find sufficient grounds for the injunction granted.

B. ADMISSIBILITY OF NEW EVIDENCE

54. The second preliminary issue concerns the admissibility of an affidavit sworn by Amar Randhawa on August 26, 2020, after the first day of the hearing. The affidavit attached a voice recording made after the hearing began, between Amar (Paul's son) and Harpreet Kaur, an attendant at the Petro Canada on Trafalgar Road in Hornby, Ontario ("Petro Station").
55. This evidence purportedly addresses a dispute between the parties as to whether ASR resources were used to purchase fuel for a Motion truck at the Petro Station on June 6,

2020. This substantive issue is more fully dealt with below, and for reasons that follow, I conclude that it is unnecessary to admit Amar's affidavit.

1. *Paul*

56. Counsel for Paul relies on Rule 39.02 of the *Rules of Civil Procedure* as well as the test set out in *DK Manufacturing Group Ltd v Co-Operators General Insurance Company*, 2020 ONSC 1259 at paragraph 11.¹
57. According to Paul, this is evidence that directly relates to a matter raised on cross-examination of Karanvir Singh, a truck driver who works with ASR. Specifically, Paul notes that despite delivering multiple affidavits, it was only on cross-examination that Mr. Singh said that he used a fuel card provided by the Petro Station to assist Subeet Randhawa, Rana's son, with refueling a Motion truck.

2. *Rana*

58. Rana objects to the introduction of this evidence on the basis that it is hearsay evidence and Paul could have but did not summons Ms. Kaur to be examined. He notes that what

¹ In that decision Master Muir provides as follows:

[11] The courts have developed a four-part test when deciding whether leave should be granted under [Rule 39.02\(2\)](#). The law is well summarized in Master Jolley's decision in *Nexim Healthcare Consultants Inc. v. Yacoob*, 2018 ONSC 91 (Master), a decision relied upon by Co-Operators. At paragraph 9 of that decision Master Jolley states as follows:

9. The four-part test for granting leave is set out in *First Capital Realty Inc. v. Centrecorp Management Services Ltd.*, 2009 CarswellOnt 6914 (Div. Ct.): (1) is the evidence relevant; (2) does the evidence respond to a matter raised on the cross examination, not necessarily raised for the first time; (3) would granting leave to file the evidence result in non-compensable prejudice that could not be addressed by imposing costs, terms or an adjournment; and (4) did the moving party provide a reasonable or adequate explanation for why the evidence was not included at the outset. A flexible, contextual approach is to be taken in assessing the criteria relevant to [rule 39.02\(2\)](#) having regard to the overriding principle outlined in Rule 1.04 that the rules are to be interpreted liberally to ensure a just, timely resolution of the dispute. An overly rigid interpretation can lead to unfairness by punishing a litigant for an oversight of counsel. As stated by Master Muir in *Mars Canada Inc. v. Bemco Cash and Carry Inc.* 2015 ONSC 8078 at paragraph 10, "In my respectful view, the court should avoid a rigid interpretation of Rule 39.02. The flexible, contextual approach is to be preferred." As noted in P.M. Perell & J.W. Morden, *The Law of Civil Procedure in Ontario*, commenting on *First Capital Realty* and quoted in *Shah v. LG Chem, Ltd.* 2015 ONSC 776, "the Divisional Court held that all the criteria should be weighed and no one criterion was determinative."

happened at the Petro Station, how fuel was paid for, and by whom, has been in issue since the outset. Rana asks that the evidence not be admitted, or that if admitted, be given no weight.

3. Determination – Admissibility of Amar’s Affidavit

59. I advised the parties that I would take under advisement the acceptance of Amar’s affidavit and the attached recording. Having considered the disputed evidence and reviewed the comprehensive record delivered in respect of this motion, I find that it is not necessary to resolve this issue of admissibility as the impugned affidavit is not determinative of the issues before me. I have therefore not considered Amar’s affidavit or the attached audio recording in determining the present motion.

IV. ISSUES FOR DETERMINATION

60. The remaining issues to be determined in respect of Rana’s motion are:
- a. Whether I have the jurisdiction to appoint an inspector pursuant to sections 161-163 of the OBCA or sections 121 of the *Courts of Justice Act*;
 - b. If yes, whether Paul made full and frank disclosure in his *ex parte* motion record;
 - c. If yes, whether the test for the appointment of an inspector is met on the current evidentiary record; and
 - d. Whether a strong *prima facie* case and irreparable harm have been established, justifying injunctive relief.
61. Prior to turning to the parties’ submissions in respect of the substantive issues in dispute, I review some of the relevant evidence delivered.

V. EVIDENCE

62. On behalf of the Respondents, the following witnesses swore affidavits:

- a. Rana Randhawa swore two affidavits dated July 31, 2020, and August 14, 2020;
 - b. Subeet Randhawa – Rana’s son – swore an affidavit dated July 31, 2020;
 - c. Baldev Dhindsa, the sole shareholder, officer, and director of Motion swore an affidavit dated July 31, 2020; as well as
 - d. The following three ASR truck divers: Karanvir Singh swore two affidavits dated July 31, 2020 and August 16, 2020 respectively; Narinder Singh swore an affidavit dated August 1, 2020; and Nicholas Peet swore an affidavit dated August 5, 2020.
63. The Applicant, Paul, relies on his initial affidavit sworn June 26, 2020, as well as his responding affidavit sworn August 10, 2020. He also relies on the affidavit of his private investigator, Don Colbourn, sworn June 26, 2020, which attaches a private investigation report (the “Colbourn Report”) and an affidavit sworn by a member of Paul’s legal team dated August 10, 2020.
64. All of the affiants, with the exception of Paul’s counsel, were cross-examined in real-time at the hearing.
65. The issue in dispute raised by Paul in his Notice of Motion dated June 30, 2020 is the lack of transparency with which Rana has been operating ASR. Of particular concern are the details of its financial operations and the details of the relationship between ASR and Motion, if any.
66. The practical significance of the lack of transparency is that the parties have yet to sell the Trucking Business pursuant to the October Minutes. ASR is a part of the parties’ Trucking Business and, in a manner consistent with the requirements of the 2018 Consent Order of Justice Wilton-Siegel and the October Minutes, the parties are to effect its orderly sale and share the sale proceeds equally. Without insight into its operations, Paul is concerned that Rana is transferring ASR business and assets to a third party,

Motion, which will decrease the value of the Trucking Business, and therefore Paul's equal share in it.

67. As an indication of how far behind in the sale process they are, some two years after the execution of the October Minutes, the parties have yet to even complete financial statements for the last three years in respect of the Trucking Business.
68. I note that Rana did not dispute Paul's evidence that the parties had agreed to prepare financial statements in respect of the RGC Group as a preliminary step toward selling the Trucking Business. In addition, Rana did not provide any rebuttal evidence in response to Paul's allegation that Rana has not complied with the parties' agreement to complete the financial statements or their agreement to exchange draft statements prior to their final completion.
69. Below I set out the evidence most relevant to the factual issues in dispute. In numerous instances, as in the past, the testimony of Paul and Rana is simply at odds. Accordingly, I am obliged to make determinations of the matters in issue on a balance of probabilities considering the evidence presented and documents tendered as a whole, having regard for the circumstances and, importantly, the evidence that ought to have been reasonably available to the parties but was not tendered.

A. RELATIONSHIP BETWEEN ASR AND MOTION

70. Paul asserts on the basis of the Colbourn Report, that Rana and his son are working for the benefit of Motion, and not ASR, in violation of the parties' obligations to act in good faith in the operation of the Trucking Business in anticipation of its sale, pursuant to the terms of the October Minutes.
71. Subeet is not a party to the October Minutes, and therefore not bound by the obligations set out therein. However, where Subeet is engaging in conduct for the benefit of Rana, and such conduct would violate the terms of the October Minutes, I am satisfied that the evidence relating to Subeet is relevant to the present motion.

72. Motion is a company incorporated in May 2018 by Mr. Baldev Dhindsa, its sole shareholder and director, who Paul identified as a friend of Rana's from when they were both in India.
73. The Colbourn Report also identifies Motion as being the ultimate owner of a number of ASR vehicles.
74. According to Mr. Dhindsa, while Motion was incorporated in May 2018, it did not commence business operations until December 2019. Curiously, it was also Mr. Dhindsa's evidence that he has been retired since August 2017.
75. Rana categorically denies any personal involvement with Motion but admits that he knows Mr. Dhindsa who has been a long-time friend and who in the past has lent Rana money. According to Rana, Motion is owned and operated for the exclusive benefit of his friend, Mr. Dhindsa.
76. Rana denies knowing that Motion was incorporated in May 2018, or that it came to own equipment that ASR used to own. Rana says he only learned those facts in the course of this motion, despite his son, who lives with him, working for Motion since November 2019.
77. According to Rana, Motion is not a competitor, as it carries different types of loads than ASR. While Rana acknowledged that ASR and Motion get some of their work from the same customers, he denies that ASR has lost any work to Motion. No documentary evidence from ASR or Motion was tendered in this respect.
78. Rana denies having any interest in Motion or receiving any income or benefits from it. He admitted being aware that Subeet started working part-time for Motion in November 2019, a month before Mr. Dhindsa testified that Motion commenced operations.
79. Subeet is Rana's 20-year old son. He lives with Rana, has never worked full-time in the trucking industry, and allegedly only started working when Mr. Dhindsa is said to have approached him in November 2019 to work for Motion on a part-time basis.

80. Contrary to Rana, Subeet candidly acknowledged that ASR and Motion are competitors, in that they are both transport companies that service some of the same clients.
81. Both Subeet and Mr. Dhindsa testified that Rana had no advance knowledge of or hand in arranging their working relationship.
82. I find it difficult to believe that Rana was not involved in connecting his young son and long-time friend to work in the same industry, including from the same trucking yards, as ASR – the company operated exclusively by Rana.
83. It remains unclear exactly what Subeet's role at Motion was (assuming his employment has now come to an end).
84. According to Subeet, he coordinated loads and prepared invoices until February 2019, at which time he got his commercial truck driving license and thereafter added to his Motion responsibilities, driving trucks for repairs, maintenance, and refuelling. Subeet did not drive any load contracts.
85. According to the drivers that gave evidence, Subeet acted as dispatcher for the drivers.
86. Based on Mr. Dhindsa's retirement and limited knowledge of the operational details of Motion, detailed below, it seems as though Subeet has been the only person meaningfully operating the company. It is unclear how he was doing so on a part-time basis.
87. The evidence is that in exchange for his services to Motion, Subeet did not receive any salary from Motion. Rather, Subeet testified that he was banking hours until August 2020, the anticipated termination date of his employment. At the end of his employment, Subeet expected to be paid a lump sum from Motion for all of his time since November 2019.
88. Until at least April 1, 2020, however, Subeet and Rana confirmed that ASR continued to pay Subeet, which it had been doing for a number of years. The evidence is that these payments stopped at some point after the COVID-19 pandemic in the Spring of 2020, but again, no helpful evidence was put forward in this regard.

89. I find it highly suspicious that Rana's son would be working for Rana's friend, in the same industry as Rana's own company, and that ASR, not Motion, would be providing Subeet with regular monthly compensation, even if that had been an agreed upon practice prior to Subeet working for Motion. The evidence is unclear whether ASR was really compensating Subeet for the work performed by Motion, which could have easily been dispelled with documentary records pertaining to Subeet's pay from ASR, hours worked for Motion, or compensation arrangement with Motion.
90. Mr. Dhindsa's evidence did not assist in dispelling any suspicions regarding the relationship between Motion and ASR. He had what can only be described as insufficient information in respect of the business operations of Motion.
91. In particular, according to Mr. Dhindsa, though Motion was not operating for nearly a year and a half after its incorporation, it was purchasing equipment, the bulk of which coincidentally came from ASR, his long time friend's company, unbeknownst to him.
92. Similarly, Mr. Dhindsa had no explanation for Motion's financial ability to purchase equipment in 2020 when, at the same time, Mr. Dhindsa advised that business was so slow that he was negotiating the deferral of rental payments to Border Bound for use of its yard.
93. Neither Mr. Dhindsa nor Subeet tendered any documentary record for Motion, including financial records relating to the equipment purchased by Motion, and when asked about the funds used to purchase this equipment, Mr. Dhindsa advised, again without corroborating evidence, that he used personal funds.
94. In addition, when asked about the current operations of Motion, Mr. Dhindsa stated that he had no knowledge of any of the accounting or other operational processes, as Subeet looked after that. Mr. Dhindsa's evidence concerning the sharing of equipment and drivers between Motion and ASR is that all of those dealings were handled by Subeet.

95. Notwithstanding that Mr. Dhindsa was cross-examined on August 25, 2020, there is no evidence that Mr. Dhindsa had any knowledge of who would run the company after Subeet left, which according to the evidence he was scheduled to do at the end of August.
96. According to Mr. Dhindsa, the only person with knowledge of the company's operations was leaving imminently, and there was no evidence of who, if anyone, would take over. I find that evidence concerning.

B. ASR'S DECLINING REVENUE

97. Paul's concern is that during the period ASR should be prepared for sale, it is diverting business to Motion. He states that based on the QuickBooks data he has access to, ASR's steep revenue decline coincides with the period just after Justice Wilton-Siegel's April 2018 Order, restricting his access to ASR operations, which also just happens to coincide with Motion's incorporation in May 2018.
98. According to Paul, most of this decline is not due to changes in work from Ford Motor Company ("Ford"), despite Rana's statement to the contrary. He highlights that the decline in revenue occurs at the same time that ASR recorded an increase in expenses for repairs and maintenance, which does not make sense if, as suggested by Rana, ASR vehicles are operating less frequently because the work was diminishing.
99. Paul asserts that ASR's revenue decline is also much steeper than that of ProEx or what was experienced in the industry more generally, contrary to Rana's evidence.
100. Paul specifically notes that a comparison between ASR and ProEx revenues over the last few years supports his position. From 2018-2019, for example, ASR's revenues declined by nearly 20% while ProEx revenues declined 4%. The reason for the steeper decline in ProEx revenues between 2017-2018, according to Paul, is due to a joint decision of Paul and Rana to transfer the ProEx account with its customer, TST Overland Express ("TST"), to ASR. While Paul acknowledges that TST cancelled its business around the same time, the driver that previously generated the work with TST continued working with ASR, generating it revenue.

101. Rana relies on a comparison of the companies over the full period between 2017-2019, which is said to be misleading because he fails to properly account for the transfer of TST.
102. Rana did not respond to the evidence concerning TST or to Paul's concern regarding ASR's increasing repair and maintenance costs at a time that Rana asserts that business was slowing down. He denies diverting any business to Motion and highlights that ASR has completed work for approximately 188 new customers since January 1, 2018 and that it has since been awarded new lanes from the Ford.
103. In respect of ASR's declining revenue, Rana provides no expert evidence in respect of industry trends, but relies on articles and e-mails from customers which he admitted on cross-examination were solicited by an employee of ASR, who did not testify, to rebut Paul's evidence.
104. Rana points to the loss of numerous trucking lanes from Ford's Oakville Assembly Line as a specific cause of ASR's declining revenue since November 2019.
105. Rana also asserts, without documentary support other than a spreadsheet presumably prepared by ASR, that fourteen other customers, in addition to Ford, dropped freight volumes, resulting in nearly \$2 million in lost revenue.
106. According to Rana revenues only further declined in 2020 due to the impact of the COVID-19 pandemic. ASR thus had reduced work for drivers and reduced need for equipment, which Rana offers as an explanation for why he was selling equipment during this period.
107. As the sole operator of ASR, Rana has access to the full scope of ASR books and records, virtually none of which were provided to support the assertion that ASR's declining revenue is nothing more than what the industry at large has purportedly faced, including ProEx.

C. SALE OF ASR EQUIPMENT

108. Paul asserts that until he hired a private investigator, he was unaware, contrary to the Order of Justice Wilton-Siegal dated April 27, 2018, that ASR was transferring assets outside the ordinary course of business. Paul says that he knows of no legitimate business purpose for ASR to transfer over a dozen vehicles to Motion.
109. Rana states that ASR and Subeet Carriers, another RGC Group company, regularly buy and sell trucks and other equipment. He asserts that ProEx and Guru Logistics Inc, the companies operated by Paul, do the same, as it is a regular feature of the trucking industry.
110. In response to Paul's assertion that in the ordinary course of business ASR always sold vehicles at auction, not resellers, Rana only accepts that he often sold equipment by auction, but states that he has also sold many ASR trucks directly to resellers.
111. In respect of the trucks set out in the Colbourn Report as having been transferred from ASR to Motion, Rana asserts that each of these were in fact sold through resellers. Rana states that he did not discuss with any of the resellers to whom they intended to sell the trucks, and he was unaware of any intention to re-sell these trucks to Motion.
112. As noted above, Mr. Dhindsa also states that he had no knowledge that the equipment purchased by Motion used to be owned by ASR.
113. Where there was an issue of the timing of the sale to the reseller versus the registration with the Ontario Ministry of Transportation by Motion, Rana suggests that the reason the resellers were not listed as registered owners of these trucks may be because where a purchaser is also a reseller, they do not necessarily register the equipment to themselves. Instead, only the ultimate owner becomes the registered purchaser of the re-sale transaction.
114. According to Rana, each of the sales were properly recorded in QuickBooks, and provided to Paul as part of the monthly financial disclosure package.

115. The records appended to Rana's current affidavit are different from the records provided to Paul, and in particular, Rana's exhibit contains more details concerning the sale of the trucks in question, such as VIN numbers.
116. According to Rana these changes are because ASR's accountant, on her own initiative in response to some of the questions raised by Paul in his *ex parte* motion record, updated the entries in question with more detail, but did not change any of the data already contained therein. He adamantly denies requesting her to amend the entries in any way.
117. He also admits, however, that he did not provide ASR's accountant with a copy of the *ex parte* Order or advise her not to amend any of ASR's books and records in accordance with the injunctive relief set out therein. The bookkeeper was not called as a witness.
118. Finally, Rana asserts that it is wrong to suggest that these trucks were part of an attempt to sell-off ASR's equipment as ASR has bought and/or leased equipment as well. He notes four examples, which I observe are dated between December 2017 and May 2018, prior to Motion's incorporation and the most recent events upon which Paul's *ex parte* motion was based.
119. Having considered the evidence as a whole, I find it extremely implausible that there was not some communication between ASR and Motion in respect of the equipment transferred between the companies.
120. Not only do the persons in charge of day-to-day operations of each of those companies live together, they are father and son. I find it unlikely that Rana would have made the decision to sell more than a dozen assets, approach a re-seller, and sold the equipment without notifying Subeet or Mr. Dhindsa, who then just happened to approach the same resellers around the same time period, and purchase the same equipment. The fact that no documents were tendered by Subeet or Mr. Dhindsa in respect of Motion's asset purchases since 2018 only heightens my concerns.

D. THE JUNE 6, 2020 REFUELLING INCIDENT

121. According to Paul, relying on the Colbourn Report, Subeet was observed refuelling a Motion vehicle at the same time and place that an ASR fuel card was used at the Petro Station. Rana, along with his son, Subeet, and an ASR driver, Karanvir Singh, were all present.
122. Paul did not initially highlight that Mr. Singh was also at the Petro Station that day refuelling an ASR truck and reefer van.
123. According to Rana, he was only there to bring his son house keys, which Subeet had forgotten. Rana purportedly had no idea that Subeet also forgot his Motion fuel card.
124. Subeet was driving a Motion truck as part of his duties with Motion. In his affidavit he states that he paid \$150 in cash to refuel the Motion truck he was driving. Subeet attached a receipt for \$150 in fuel paid in cash at 9:40am on June 6, 2020. There is no mention of Mr. Singh in Subeet's affidavit sworn July 31, 2020.
125. Mr. Singh's initial affidavit sworn July 31, 2020 also did not mention Subeet or Rana. According to Mr. Singh, he attended at the Petro Station on June 6, 2020 to refuel an ASR truck and reefer van. Mr. Singh produced two receipts showing use of a Petro Pass at the Petro Station on June 6, 2020 at 9:11am and 9:26am respectively.
126. Following delivery of Paul's responding affidavit sworn August 10, 2020, all of the related evidence tendered on behalf of Rana changed. Paul's responding affidavit contained video footage of the incident showing Rana, Subeet, and Mr. Singh together at the Petro Station, and Mr. Singh, an ASR driver, refuelling Subeet's Motion truck.
127. Mr. Singh delivered a second affidavit sworn August 16, 2020, in which he mentions for the first time that Rana and Subeet just happened to be at the same Petro Station as him on June 6, 2020. According to Mr. Singh's revised evidence, he saw Rana at the Petro Station and went over to speak with him. That is when Subeet asked Mr. Singh to refuel his truck, because Subeet did not have his gloves. Mr. Singh also said that Subeet had

forgotten his fuel card, so he gave Mr. Singh \$150 in cash, which was then used to pay for Subeet's fuel inside the station.

128. In the video of the Petro Station incident on June 6, 2020 taken by Mr. Colbourn's associates and tendered with Paul's responding affidavit sworn August 10, 2020, Mr. Singh is seen swiping a fuel card into the pump used to refuel Subeet's Motion truck. Mr. Singh made no reference of a fuel card in either of his affidavits.
129. Under cross-examination, in response to the video, Mr. Singh's evidence changed yet again. Mr. Singh then testified for the first time that after refueling Subeet's Motion truck, he used a fuel card loaned to him by the Petro Station at the pump, following which he went into the station and used the cash given to him by Subeet to pay the charge.
130. Subeet had a similarly confusing and unsatisfactory explanation for the video of Mr. Singh swiping a fuel card at the pump. In addition to having no knowledge of the fuel card used by Mr. Singh, Subeet did not remember whether Mr. Singh later gave him a receipt for the fuel, but said that he provided a picture of a receipt to Mr. Dhindsa a few days later. No documentary evidence was tendered demonstrating that Motion funds were used to pay for the fuel purchased for its vehicle by Subeet on June 6.
131. According to Rana, the fuel card and receipts provided by Mr. Singh as part of the standard practice for drivers' costs, corroborates that Mr. Singh used the ASR card to refuel an ASR truck and reefer van around the same time that Subeet refuelled his Motion truck. Rana asserts that no ASR funds were used to refuel a Motion truck. Rana gave no evidence in respect of the \$150 cash said to have been given by Subeet to Mr. Singh.
132. I note that the timing on the video footage presented in Paul's responding affidavit does not align perfectly with the timestamps on the receipts from the Petro Station on June 6, 2020.
133. The private investigator has footage of Subeet driving his Motion truck prior to arriving at the Petro Station on a video time stamped as 9:15am, therefore after the 9:11am transaction at the Petro Station.

134. There is also footage of Subeet, Rana, and Mr. Singh standing between a fuel pump and the Motion Truck, time stamped at around 9:26am. Mr. Singh is then shown swiping a Petro Pass, sometime shortly after 9:26am.
135. In response to Rana's argument that Mr. Colbourn improperly included in his report both the 9:11am and 9:26am transactions at the Petro Station despite the fact that his investigators observed Subeet on his way to the Petro Station at 9:15am, after the first receipt for fuel purchased at the Petro Station at 9:11am, Mr. Colbourn testified that he chose to identify in his report both the 9:11am and 9:26am transactions at the Petro Station because he thought both to be important, and turned his mind to the possibility that there may be some discrepancy between the clocks of the two investigators who recorded video footage that morning and the Petro Station pump.
136. I pause here to note that I generally found Mr. Colbourn to be a helpful witness. In response to a request from Rana before the hearing, he made fulsome disclosure of the contents of his investigative file, and in my view, testified honestly and clearly as to the scope and conduct of his investigation.
137. While there is no evidence of any discrepancy between the clocks on the video cameras and the gas pump at the Petro Station, I do not find it implausible for the recording time on three different devices to be inconsistent with each other, even if only by a small margin. That said, even without the precise timing of the transactions, there remain serious concerns as to the events at the Petro Station on June 6, certainly with respect to what was caught on video.
138. What is clear is that Subeet testified that he forgot his Motion Fuel Card and Mr. Singh is seen pumping fuel into a Motion truck and then swiping a fuel card.
139. All of the evidence presented on behalf of Rana in respect of this issue is problematic, not least of which is because it has evolved in significant ways, numerous times following delivery of other evidence. While I can make no determination on the record before me in respect of the Petro Station events, there remain serious concerns as to whether ASR funds were used to purchase fuel for a Motion truck on June 6, 2020.

140. The timing and amount of ASR payments would also be readily apparent by inspection of the ASR records, which were not produced by Rana.

E. BORDER BOUND AND OTHER TRUCKING YARDS

141. Paul's concern is that prior to May 2018, ASR paid very little to Border Bound. The record shows that payments prior to May 2018 from ASR to Border Bound were less than \$250 a month. There was a sudden increase in fees, up to \$2,260 per month, coinciding with the incorporation of Motion, which raises the concern that ASR is making payments on Motion's behalf. In addition, Mr. Colbourn photographed Rana with Subeet at Border Bound on or around June 8, 2020, purportedly test driving a tractor unit owned by another company. The concern is whether Rana and Subeet were acting for the benefit of Motion or ASR.
142. Rana denies attending at the office of Motion, which he says is in fact coincidentally located at the same trucking yard, Border Bound, that ASR uses. Rana states that Border Bound is a freight broker that provides transportation services itself, arranges for transportation through a number of other trucking companies, such as ASR, and leases the use of its storage yard to a number of companies, including ASR and Motion.
143. According to Rana, ASR has paid rent to Border Bound since 2018, without a written contract. Rana states that this is not unusual and is reflected in the financial records regularly provided to Paul.
144. In response to Paul's concerns that the amounts paid by ASR to Border Bound increased inexplicably around May/June 2018, when Motion was incorporated, Rana did not provide any satisfactory response. He referred to payments being recorded under different names (Border Bound Inc versus Border Bound Warehousing), but did not explain or provide corroborating documents explaining how or why that related to the sudden increase in monthly payments.
145. Mr. Dhindsa's evidence concerning Motion's use of Border Bound was that Motion negotiated rent at Border Bound commencing around the onset of the COVID-19

pandemic in March 2020 for approximately \$1,000 per month. It is unclear from Mr. Dhindsa if Motion was using Border Bound, or any other trucking yard, prior to March 2020.

146. Mr. Dhindsa explained that Motion has been unable to pay invoices for use of Border Bound due to cash flow issues as a result of the pandemic. Mr. Dhindsa's affidavit included no documents, and it is reasonable to expect that he would have some record of communication with Border Bound, if not at least some record of fees charged, or payments made.
147. Rana states that Mr. Colbourn's observation of him, Subeet and various drivers at Border Bound does not indicate any link between ASR and Motion, both of which use the yard. According to Rana, Paul knows that multiple trucking companies pay for the use of storage yards, and he should have disclosed as much.
148. In respect of the incident on June 8, 2020, where Rana and Subeet were observed together at Border Bound, Rana and Subeet's evidence is consistent. They acknowledge that they were at Border Bound together and state that Rana on behalf of ASR was test-driving a truck owned by another tenant of Border Bound, and Subeet was only there as his son, not in his capacity as representative of Motion.
149. The coincidences between ASR and Motion are numerous. Again, I find it suspicious that ASR and Motion, which are run by father and son respectively, just happened to rent from the same trucking yard. This suspicion is compounded by the uncontroverted fact that at the time Motion is incorporated, ASR starts paying significantly more in fees to Border Bound, and despite their evidence, neither Subeet nor Mr. Dhindsa delivered any documents demonstrating any commercial relationship between Border Bound and Motion.
150. The evidence of Rana and Subeet is all the more implausible in the context of a father and son who seem to attend to various business-related tasks together, including the coincidental refueling of Subeet's Motion truck and Rana's test-driving new equipment at Border Bound.

F. LENDING/BORROWING EQUIPMENT

151. The Colbourn Report shows that ASR truck #191 was used by Narinder Singh for the benefit of Motion, between April 15 and June 12, 2020 as its trips were not reported as ASR revenue. During this same period, however, the report indicates that ASR was regularly paying Narinder. More is said about this below.
152. According to Rana and Subeet, notwithstanding the latter's limited experience, it is commonplace in the trucking industry for companies to lend trucks to other companies, like Motion, without fees, as this engenders good will that can be relied upon when ASR, for example, needs to borrow equipment from those companies.
153. Rana claims that ASR has lent equipment to Motion on this very basis. Neither Rana nor Subeet presented any detailed account of this aspect of their relationship, nor is there any documentation to corroborate this.
154. Rana's support for his position is merely that this is common practice. He states that the ASR system tracks borrowed equipment as "temporary", and since October 2018 ASR has borrowed and/or lent equipment to Coastal Pacific Express (CPX), and on occasion to Border Bound.
155. Paul's evidence in response is that it is, to the contrary, not common practice for any company to loan assets to competitors without documentation and without charging a fee. The only exception, according to Paul is where assets are exchanged with other trucking companies who are customers of ASR, in the process of completing a route as part of its service in exchange for a fee.
156. To the extent that Rana presented evidence of this practice with companies other than Motion, Paul contends that these examples fit squarely within his understanding as he described.
157. In respect of the specific assets in question, Rana states that he has not been able to verify the two trucks and/or four trailers that the Colbourn Report asserts were seen attached to

Motion trucks or trailers, but he submits that this would not be out of the ordinary, especially given the downturn in work experienced by ASR. Moreover, he acknowledges that ASR truck #191 was used by an ASR driver, Narinder Singh, while he was temporarily working for Motion. More is said about this, below.

158. Rana denies that ASR truck #224 was ever lent to Motion, and according to Rana another trailer, R53001, identified in the Colbourn Report as being having been repainted and labelled by Motion in June, had been sold to a reseller, Next Truck, in March 2020.
159. Mr. Dhindsa's only evidence was that in May 2020, at the time of Motion's purported cash-flow shortage, Motion purchased an ASR trailer for an undisclosed amount from a re-seller, Next Truck. That it had been an ASR trailer was said to be unknown to Mr. Dhindsa. The evidence from Rana demonstrates that the trailer was sold to Next Truck for \$15,500. There is no evidence documenting the transaction, let alone any evidence demonstrating from where Motion would have had the funds to purchase such expensive equipment.

G. ASR TRUCK 214 AND MOTION TRUCK 1007

160. According to the Colbourn Report, the license plate for ASR truck #214 was photographed on Motion truck 1007. This would indicate yet another inappropriate connection between Motion and ASR. Rana cannot explain how this came to be, but states that the license plate expired in February 2020 and has not been renewed because ASR truck #214 is not in working condition. The truck was towed on April 3, 2020 to a yard in Brampton and has not left the yard since.
161. Employees of the yard in Brampton sent pictures of ASR truck #214 to Rana on July 30, 2020, which show the truck with the correct front licence plate, but no rear licence plate.
162. Rana does not know how a Motion truck was photographed with the same licence plate.
163. I can make no determination in respect of the import, if any, of the misplaced license plate, and therefore I exclude this from my determination herein.

H. DRIVERS AS INDEPENDENT CONTRACTORS

164. Paul relies on Mr. Colbourn's report for his evidence that the following drivers who historically worked for ASR, have done work for Motion:
- a. Brandon Goncalvez;
 - b. Nicolas Peet, and
 - c. Narinder Singh.
165. Paul also states that Mr. Singh was seen with a Motion truck at Border Bound.
166. According to Rana, drivers regularly work for multiple companies in the trucking industry. He states that Paul knows drivers are usually independent contractors. There is therefore nothing unusual about drivers working both for ASR and Motion.
167. Rana relies on the evidence of Mr. Peet and Mr. Singh as two drivers who worked for both ASR and Motion.
168. According to Mr. Peet, he used to do long-haul drives to the United States on behalf of ASR, but following a health problem in 2018, was unable to continue that route. ASR tried to accommodate him by offering him work between Toronto and Montreal, but he preferred long-haul routes. Mr. Peet's evidence is that he started working for Motion in January 2020, prior to the Covid-19 pandemic, after what he considered to be a decline in work at ASR in the last half of 2019. Mr. Peet states that he heard of Motion through the grapevine but concedes that he was aware that Subeet is Rana's son, and also the dispatcher at Motion.
169. Mr. Peet testified that as a driver for Motion he used an ASR truck for a few weeks in March 2020 after his Motion truck broke down. Mr. Peet is unaware who made the arrangements to borrow the ASR truck, or what were the terms of that arrangement. No details or documentation related to the terms of any arrangement between Motion and ASR were provided by Rana, Subeet, or Mr. Dhindsa.

170. Due to his visa conditions, Mr. Narinder Singh is purportedly an exception to the standard of drivers being independent contractors; he was hired by ASR as an employee. After the pandemic took effect, and the Ford lanes were shut down, ASR had little work for its drivers, and according to Rana, Narinder, among others, sought out temporary work.
171. There is no dispute that Narinder worked for Motion, like Mr. Peet. It is unclear if there were any others.
172. According to Narinder, he started working for Motion in 2020 after he was told by Rana that ASR had no work for him due to the impacts of the COVID-19 pandemic. His evidence is that he went to work for Motion after he had a conversation with Subeet who advised him that Motion had work for him to do.
173. Narinder allegedly worked for Motion starting April 1, 2020 and returned to full-time work with ASR by June 22, 2020.
174. Rana stated in cross-examination that he learned of Narinder working with Motion through Subeet, but he does not remember when. According to Rana, Narinder never spoke to him about the decision to seek out a job with Motion.
175. Inconsistent with Rana's evidence, Subeet testified that he did not speak to Rana about Narinder working for Motion.
176. Again, I find it implausible that Subeet, who had only worked in the trucking industry for less than six months at that point in time, and is by all accounts running the operations of Motion, would not speak to his father when one of his father's employees sought Subeet out for additional work.
177. Rana and Subeet agree that Narinder continued to be paid by ASR while working for Motion. According to Narinder, he requested to stay on ASR's payroll while working for Motion because he believed that if removed, it would create concerns for his work visa. Rana agreed and ASR paid Narinder what Rana describes as salary advances.

178. These purported advances to Narinder were not classified in ASR's QuickBooks as advances. Moreover, aside from Narinder and Subeet's oral evidence that Narinder also received payment from Motion during this period, there was no corroborating documentary evidence, from Narinder, Subeet or Mr. Dhindsa, that Motion, in fact, paid Narinder for his work.
179. Similarly, neither Rana nor Narinder were able to provide evidence of the terms of the agreement to advance payment to Narinder from ASR when it was purportedly made in April 2020.
180. Rana relies on a loan agreement said to be entered into with Narinder and dated months later on June 20, 2020.
181. Notwithstanding the fact that it was signed after Narinder purportedly received the advances, around the same time Narinder returned to work full-time for ASR, the loan agreement refers to amounts "*to be loaned,*" and requires Narinder to repay the loaned amounts.
182. There was no documentary evidence of Narinder having repaid any money to ASR.
183. Due to the immigration concerns, Narinder states that he also requested to continue to use ASR trucks and trailers while working for Motion, which ASR agreed to. According to Narinder, both companies spoke with each other and arranged for Narinder to continue using ASR trucks.
184. Again, it is unclear who from each company came to this arrangement and there was no documentary evidence corroborating this arrangement or setting out its terms delivered by Rana, Subeet, Mr. Dhindsa, or Narinder.
185. In addition to the concerns raised by ASR lending its equipment to Motion without compensation and the suspicion that ASR drivers were providing service to Motion while being compensated by ASR, Paul states that ASR drivers being diverted to Motion is at odds with Rana's refusals, since 2019, to allow ASR drivers to assist ProEx. For

example, Paul notes that in the Spring of 2020 when Paul was concerned about having a driver shortage in anticipation of the Ford lanes reopening. Rana repeatedly advised that ASR did not have the drivers to spare, despite Narinder and Mr. Peet, both ASR drivers, doing work for Motion around the same period.

186. Without derogating from the very real concerns I have about the relationship between ASR and Motion, particularly the use of ASR drivers and equipment by Motion, in exchange for questionable, if any, compensation, I accept Rana's evidence that in anticipation of a return to work after the initial shut-down following the COVID-19 pandemic he was not able to ensure that ASR could provide drivers to ProEx, as he had no idea how many drivers would return to work and how much work ASR would have.
187. Having considered the most relevant portions of the extensive evidence, I turn to the position of the parties.

VI. POSITION OF THE PARTIES

A. RANA

1. Jurisdiction to issue the ex parte Award and Order and appoint an Inspector

188. According to Rana, I had no jurisdiction to grant any relief *ex parte* because the arbitration agreement between the parties, as set out in the October Minutes, does not expressly provide for *ex parte* jurisdiction (see *Farah v Sauvageau Holdings Inc*, 2011 ONSC 1819 at paragraph 76).
189. Without such express authority, Rana asserts that *ex parte* proceedings violate sections 19, 26(2), 26(3), and 26(4) of the Arbitration Act.
190. In addition, Rana contends that there is no jurisdiction for an arbitrator to grant relief pursuant to section 161 of the OBCA. Rana refers to the language in section 161, and specifically the reference to "the court," which he notes is defined in section 1(1) of the OBCA to mean the Superior Court of Justice.

191. The court must have exclusive jurisdiction to appoint inspectors under the OBCA, according to Rana, because an inspector is a court officer exercising statutory powers, has authority to impact third parties, and is subject to the supervisory jurisdiction of the court. It is nonsensical that the legislature would have created a type of statutory remedy such that a private arbitrator with limited jurisdiction could appoint an inspector with broader jurisdiction.
192. Rana refers me to the following jurisprudence he says supports his position and which he contends ought to have been put forward by Paul when seeking the *ex parte* Order in accordance with the latter's obligation of full and frank disclosure:
- a. *Pandora Select Partners, LP v Strategy Real Estate Investments Ltd*, 2007 CanLII 8026 ("*Pandora*"), wherein Justice Lax refused to stay an application in the Superior Court seeking appointment of an inspector under the OBCA on the basis that the Superior Court was the forum of choice in the legislation.
 - b. *Armstrong v Northern Eyes Inc*, 2000 CanLII 29047 ("*Armstrong*"), wherein the Divisional Court upheld the decision of an arbitrator that he did not have jurisdiction to grant an oppression remedy pursuant to section 248 of the OBCA because it is a statutory, not equitable remedy.
 - c. *ABOP LLC v Qtrade Canada Inc*, 2007 BCCA 290 ("*ABOP*") and *Elton v 10 Start Events Inc*, 2018 BCSC 1974 ("*Elton*"), in which, according to Rana, the British Columbia courts specifically held that arbitrators did not have jurisdiction to issue relief in the nature of a statutorily provided oppression remedy and the appointment of an inspector.
193. Rana further disagrees that the power to order the inspection of property and documents in section 18 of the Arbitration Act is applicable. Rana submits that this power can only be exercised where the property or documents in question are the subject of an arbitration, and here Paul has not commenced any proceeding for an oppression remedy, breach of the October Minutes, or anything else.

194. Finally, Rana does not concede that Paul is in fact a 50% owner of the RGC Group, but only that the October Minutes provide him with a right to a 50% share of the proceeds of the sale of the relevant businesses.

2. Paul's failure to make Full and Frank Disclosure

195. According to Rana, even if there is jurisdiction for an arbitrator to make an *ex parte* award pursuant to section 161 of the OBCA, there is sufficient ground to set aside the *ex parte* Order on the basis that Paul failed to meet the high obligations of candour and disclosure of relevant legal and factual issues known to him that favour Rana (see *Boal v International Capital Management Inc*, 2018 ONSC 2275 a paragraph 59).
196. Given the injustice of granting an *ex parte* order on the basis of deficient or misleading information, Rana argues that the following material misrepresentation and material non-disclosure is sufficient to set aside an order made without notice, even if the non-disclosure was unintentional (see *United States of America v Friedland*, [1996] OJ No 4399 at paragraph 28 and *Mosregion Investments Corp v Ukraine International Airlines*, 2009 CarswellOnt 1899 at paragraph 14, *aff'd* 2010 ONCA 715).
197. First, as indicated above, Rana asserts that Paul failed to present the clear binding precedent that arbitrators do not have the jurisdiction to grant OBCA remedies (see *Natale v Testa*, 2018 ONSC 4541 at paragraph 16).
198. Second, Rana highlights the following non-disclosure within the motion record delivered in support of Paul's *ex parte* motion:
- a. Non-disclosure of well-known practices and trends in the trucking industry, including that:
 - A. Storage yards are used by a number of trucking companies, and specifically that the Border Bound yard identified in Paul's motion record, are used by numerous companies, not just ASR and Motion suggesting some inappropriate link;

- B. The buying and selling of equipment is in the ordinary course of business, even through resellers, such that the fact that Motion purchased equipment through resellers that happened to come from ASR does not imply a link between the companies;
- C. Drivers are generally independent contractors who work for multiple companies, so it is not unusual for ASR drivers, when its workload reduced, to supplement their work by driving for Motion;
- D. It is common for companies to borrow and lend trucks to another to generate goodwill between companies, which explains why Motion used ASR equipment; and
- E. The trucking industry more broadly has experienced declining revenue in recent years due to reduced freight volume and load prices, which explains why ASR, like other companies including Paul's ProEx experienced comparable declines in revenue.

199. According to Rana, Paul also failed to make the following disclosure:

- a. Paul failed to disclose ASR records that provide an explanation for his allegation that there is some inappropriate link between ASR and Motion. For example, Paul failed to disclose QuickBooks entries that demonstrate that ASR received value for the sale of equipment to third parties, which Paul suggested in his *ex parte* motion record were surreptitiously transferred to Motion.
- b. Paul failed to disclose the ASR driver, Mr. Singh, who was at the Petro Station refueling ASR equipment on June 6, 2020 when the ASR fuel card was used.
- c. Similarly, the private investigator failed to identify that the timing of the transactions at the Petro Station as reflected on the receipts were inconsistent with the video footage presented.

- d. Paul failed to disclose his unlawful authorization of the private investigator to enter ASR trucks, constituting trespass contrary to the Code of Conduct established under the *Private Security and Investigative Services Act, 2005*, SO 2005, c 34. According to Rana, Paul is not an owner with authority to enter or authorize entry into ASR vehicles. The brothers do not operate the businesses together, and Rana notes that Paul is subject to an injunction issued by Justice Wilton-Siegel preventing him from attending at the business of ASR. Rana further notes that the private investigator himself was alive to these concerns, and refers me to an internal e-mail with the private investigator and his staff. According to Rana, it was incumbent on Paul to disclose this impropriety, absent which he has unclean hands.

200. In addition to the above non-disclosure, Rana asserts that where material facts were included in the Colbourn Report, they were not properly explained in Paul's affidavit, but rather buried as exhibits in the motion record inconsistent with the obligation of full and frank disclosure (see *830356 Ontario Inc v 156170 Canada Ltd*, 1995 CarswellOnt 4360 at paragraph 23).

201. For example, Rana asserts that:

- a. Paul fails to identify that the vehicles acquired from ASR by Motion were acquired through third party resellers as noted by the private investigator;
- b. Paul does not disclose that an ASR employee was at the Petro Station refueling ASR equipment at the time he alleges an ASR fuel card was improperly used to refuel a Motion truck;
- c. Paul's affidavit fails to acknowledge that there is no evidence of Rana operating Motion or receiving any benefit therefrom; and
- d. Paul's affidavit does not identify that the ASR trailer repainted and labelled by Motion was purchased by Motion through a reseller a month prior.

202. Rana acknowledges that there is discretion to maintain an *ex parte* order even where non-disclosure exists, but states that such an exercise of discretion is not warranted here.
203. Moreover, according to Rana, he does not bear the burden in the present motion, rather, the burden is on Paul to establish that there are grounds to permanently continue the *ex parte* Order.
204. Rana argues that Paul has not met his burden and that there are grounds to set aside the *ex parte* Order, given that Paul swore evidence highlighting an interpretation of the evidence that supports his case, but omitted to disclose in his affidavit the evidence unhelpful to his case that was either buried in the record, or in some cases not included at all.

3. There are no grounds for an Inspector

205. Rana asserts that Paul has not satisfied the test for the appointment of an inspector.
206. First, he is not a shareholder or security holder of ASR, and Rana highlights that, to date, Paul has refused to reclassify the share structure to reflect his interest.
207. Most importantly, however, Rana argues that he has provided a full explanation for the allegations of oppression raised by Paul in his motion. In particular Rana submits that:
- a. There is no evidence that the sales of equipment that ended up with Motion did not benefit ASR. In fact, these were transactions in the ordinary course of business and recorded in the ASR books;
 - b. Paul admitted in response to Rana's evidence that ProEx also loaned trucks and trailers to other companies;
 - c. The evidence is that Rana's son, Subeet was not operating Motion on behalf of ASR but in fact was hired by Motion on a part-time basis;
 - d. In respect of Paul's complaint concerning Rana's unwillingness to share ASR drivers, the evidence is that Rana simply cannot compel drivers to work for

ProEx which does city work, if those drivers would prefer or otherwise be given long haul routes. Rana refers to the evidence of Mr. Peet, who confirmed that he worked with Motion because Motion had long haul routes to the Maritimes that ASR could not compete with; and

- e. Paul had regularly received significant disclosure and instead of responding to counsel's request for details about any concerns, Paul sought *ex parte* relief pursuant to the OBCA.

208. Rana relies on the decision in *Khavari v Mizrahi*, 2016 ONSC 4934, for the proposition that at the very least there are credibility issues between the parties such that no inspector ought to be appointed.

4. There is no Basis for Injunctive Relief

209. Rana relies on the same arguments articulated above in respect of my jurisdiction to grant relief *ex parte* to argue that the injunctive relief should not be continued. He also asserts that Paul's failure to provide full and frank disclosure is equally fatal to his request for injunctive relief.

210. Additionally, Rana submits that Paul's request for ongoing injunctive relief should be denied, or not continued as there is no claim being advanced, and Rana argues that an injunction is meant to preserve records, but there is no evidence of any records being at risk of destruction. Rana testified that he does not personally maintain the books and records of ASR, and highlights that the accountant responsible also works with Paul.

211. In respect of the allegation that the books were altered after the injunction was issued in the *ex parte* Order, and in violation of its terms, Rana says that he did not direct anyone to make changes to the books, but rather that in response to some of Paul's concerns, the accountant added additional detail, but did not change any existing information, in respect of the sale of assets.

B. PAUL

212. Paul highlights the long history of a lack of cooperation between the brothers, and notes that despite all of the submissions made, Rana has not been able to advance any evidence of prejudice should an inspector be appointed to provide Paul with the information he is entitled to receive under the October Minutes.

213. In respect of the particular issues outlined above, Paul makes the following submissions.

1. *Jurisdiction to issue the ex parte Award and Order*

214. According to Paul, I have the jurisdiction to issue an *ex parte* Order and Award because, among other things, I have all the powers of equity pursuant to section 31 of the Arbitration Act. Paul asserts that Rana has not provided any authority where circumstances support an injunction on an *ex parte* basis, but the arbitrator was somehow limited in awarding such an injunction.

215. The fact that the OBCA provides a statutory remedy before the courts is also not determinative of an arbitrator's jurisdiction, according to Paul.

216. Paul submits that the same arguments advanced by Rana were rejected by the court in *The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v Canada Hearing Society*, 2018 ONSC 5445 ("*The Campaign*") at paragraph 58-59.

217. Paul argues that even the authorities put forward by Rana support a finding of jurisdiction for an arbitrator to award remedies under the OBCA (see *Armstrong v Northern Eyes Inc*, 2000 CarswellOnt 1513 (On Div Ct) ("*Armstrong*"); *Butt v Express Plus Inc*, 2004 CarswellOnt 471 at paragraph 33(ONSC); and *Blind Spot Holdings Ltd v Decast Holdings Inc*, 2014 ONSC 1760 ("*Blind Spot*") at paragraph 28 .

218. Similarly, Paul submits that Rana's reliance on *Pandora* is misplaced. Rana asserts that this case supports his position that the Superior Court is the proper forum for the appointment of an inspector pursuant to the OBCA. Paul, however, highlights that Justice Lax acknowledges that an arbitration clause can be drafted to confer jurisdiction

under the OBCA, but that the clause at issue in her decision “captures disputes about the investment transaction [in that case] and not about statutory remedies.”²

219. Paul asserts, therefore, that he did not fail to put forward binding precedent, and where Rana has found cases from British Columbia to support his position concerning jurisdiction, these are not representative of the law in Ontario.
220. Paul disputes that an underlying claim is necessary for any of the relief sought in his *ex parte* motion. He highlights the number of times the parties have appeared before me for urgent relief to resolve disputes arising out of the implementation of the October Minutes or the UB Minutes. This includes when the parties sought injunction-like relief in respect of their India Property in January 2020.
221. While the inspector may be a court officer, Paul notes that this does not derogate from my jurisdiction, as the same could be said about a manager/receiver, which the parties clearly agree I have the jurisdiction to appoint as set out in the Consent Award dated December 5, 2018.
222. Finally, Paul asserts that:
 - a. I have the equitable jurisdiction to appoint a receiver with broad investigatory powers under section 101 of the *Courts of Justice Act*;
 - b. The power to appoint an inspector is consistent with the powers afforded to me under section 18 of the Arbitration Act; and
 - c. Any concerns that the inspector is not a party to the arbitration are inconsequential because the inspector would have to agree to the appointment, making him a party to the process.

² See paragraph 17.

2. Paul met his Obligations of Full and Frank Disclosure

223. Paul acknowledges that he had an obligation to make full and frank disclosure on the *ex parte* motion but disagrees with Rana's articulation of that obligation.
224. Paul relies on *Two-Tyme Recycling Inc v Woods*, 2009 CarswellOnt 7181, and asserts that the standard for disclosure is not one of perfection. Non-disclosure may result in a dissolution of the Order, but only where it would have had an impact on the original order being made. Moreover, even on a finding of material non-disclosure, there is residual discretion to maintain the *ex parte* Order. Paul notes that the purpose of the rule is to deprive the plaintiff of an advantage improperly obtained and where this principle does not apply, the rule ought not to be strictly enforced.
225. Paul asserts that none of the following evidence has been challenged, and therefore on its own justifies the *ex parte* Order:
- a. Rana's failure to provide him with drafts of ASR's financial statements prior to filing;
 - b. Rana's failure to provide Paul with access to the information portals described at paragraph 5 of the UB Minutes;
 - c. Rana's failure, in accordance with paragraph 6 of the UB Minutes, to provide Paul together with the financial disclosure set out in the October Minutes, reports/documentation sufficient to enable Paul to monitor the petty cash;
 - d. Rana's provision of monthly bank statements that are missing pages;
 - e. Paul's evidence that ASR's decline in revenue exceeds that of ProEx and the general industry decline; and
 - f. Rana's failure to explain increased fees to Border Bound following the incorporation of Motion.

226. Even if Rana's concerns regarding non-disclosure are legitimate, Paul asserts that they would not impact the result.
227. Moreover, Paul notes that there is an informational imbalance between him and Rana such that Paul cannot be expected to have had the evidence Rana is now presenting for the first time (see *East Guardian SPC v Mazur*, 2014 ONSC 6403).
228. Paul further requests that an adverse inference be drawn against Rana, as much of the evidence he has advanced is unsupported by corroborating documents that should be available to him (see *1413910 Ontario Inc v Select Restaurant Plaza Corp*, 2006 CarswellOnt 8579 at paragraph 59).
229. In response to the specific allegations of non-disclosure, Paul submits as follows:
- a. In respect of the binding legal authorities, as articulated above, the relevant authorities were disclosed and the law in Ontario is such that I do have jurisdiction to award statutory remedies pursuant to the OBCA;
 - b. In respect of well-known practices and trends in the trucking industry:
 - A. Paul does not dispute that multiple trucking companies may rent space from the same yards, but states that the concern is that suddenly in May 2018, at the same time that Motion was incorporated, ASR started paying more in monthly fees to Border Bound leading to suspicion that ASR was paying Motion's fees for use of the yard. Paul asserts that Rana has still not addressed this concern.
 - B. In respect of the sale of assets, Paul underscores that he advised the arbitrator that some assets were sold "indirectly" and therefore did not fail to disclose the role of resellers. On the other hand, Paul submits that Rana's evidence that he was unaware that the assets were sold to Motion is not believable. This is particularly so given that Rana's son is managing the operations of Motion, two assets were transferred

directly from ASR to Motion, and six of the assets were transferred to Motion on the same day that they were sold by ASR.

- C. In respect of ASR drivers working for Motion, Paul notes that he cannot be faulted for not-disclosing ASR's reduced needs for drivers because Rana had consistently represented to him that ASR had a driver shortage.
 - D. Moreover, Paul submits that expecting him to disclose that drivers are typically independent contractors is inconsistent with Rana refusing to allow him to contact "ASR drivers."
 - E. Paul denies that it is a well-known practice to lend assets to competitors (particularly where the competitor is not also a customer of ASR) without documentation and without charging a fee.
 - F. In respect of the declining revenue, Paul asserts that ASR's financials reveal declines in excess of the general trends in the industry. Rana has not provided any credible explanation for this. Nor does Rana, according to Paul, answer how ASR was spending more on maintenance and repairs at a time when operational revenues were declining. In response to Rana's suggestion that Paul failed to disclose ProEx's own revenue decline, Paul submits that ProEx's revenue decline is largely due to the decision in 2017 to move its business to ASR, and in any event, ProEx experienced a much less significant decline in its revenues than ASR has since 2018. According to Paul, Rana had no response to this evidence.
- c. In response to the allegation that Paul failed to disclose accounting records evidencing the sale of equipment by ASR, Paul notes that the records now relied upon by Rana are different than those provided to Paul, and more importantly, these entries according to Paul are buried in thousands of line entries, often misclassified or incomplete.

- d. In response to the concern that Paul failed to disclose Mr. Singh's presence at the Petro Station, Paul submits that the full evidence concerning this incident only amplifies his concern. Mr. Singh's evidence morphed from having no involvement in refueling the Motion truck to, once the video of the transaction was disclosed, having some involvement that remains unclear in the evidence.
 - e. Paul disagrees that he is not an equal owner with equal authority to authorize entry into ASR trucks and therefore disagrees that he failed to disclose material facts in not revealing that he authorized the private investigator to enter ASR trucks.
 - f. In response to the critique that Paul failed to explain why Mr. Dhindsa did not attend at Motion's office, Paul asserts that he could not be expected to have knowledge of the reasons Mr. Dhindsa was not ever seen at Border Bound. Most importantly, however, Paul notes that Mr. Dhindsa's evidence is that he retired in August 2017 and he could not explain the company's financial situation, including why it purportedly could not pay fees to Border Bound at a time when it was paying for ASR equipment. Paul also notes that Mr. Dhindsa had no documents to corroborate his evidence.
230. In response to the allegation that Paul purposely left the arbitrator with an impression of the evidence that favoured Paul while failing to disclose evidence hidden in the Colbourn Report, Paul argues:
- a. He clearly asserts in his affidavit that ASR transferred equipment both directly and indirectly, but the problem remains that somehow Motion ended up with 13 pieces of ASR equipment without notice to Paul or without any clearly identifiable notes in the books and records;
 - b. He did not fail to disclose that his suspicion that Rana and/or his son were operating Motion was based solely on photographs of the two of them in the presence of Motion vehicles, because the private investigator confirmed that

Rana's son is operating Motion, and Rana's connections, according to Paul remain inherently suspect; and

- c. It was not misleading for Paul to give evidence concerning the ASR trailer that was re-painted and labelled to become a Motion trailer. If Rana is suggesting that Paul's lack of explanation for this is misleading, it was open to him to lead evidence that the trailer always had a Motion logo, but he did not.

231. In respect of the evidence related to the movement of a single license plate from a non-operational ASR truck in Brampton onto an un-plated Motion truck in Milton, Paul asserts that he has no explanation, as he has been shut out of ASR's operations, and that the lack of explanation raises the index of suspicion necessary to justify the appointment of an inspector. In any event, Paul submits that the Order appointing an inspector is justified on the balance of the evidence.

3. There are Sufficient Grounds for the Appointment of an Inspector

232. Paul submits that, notwithstanding the evidence led by Rana, there are sufficient grounds for the appointment of the inspector. Specifically, he relies on the following in the evidentiary record:

- a. Rana does not dispute that Paul does not have direct access to ASR's books and records and is unable to oversee the preparation of its financial information;
- b. Rana does not dispute that in almost two years, he has not prepared the requisite financial statements to advance the sale of the Trucking Business;
- c. Rana does not dispute that the parties agreed to exchange draft financial statements prior to their finalization, and that Rana did not provide Paul with any drafts for ASR's 2017 or 2018 financial statements, while Paul provided Rana with drafts for ProEx's 2017 financial statements;
- d. Rana does not dispute that Paul still does not have access to the information portals set out at paragraph 5 of the UB Minutes which would enable him to

monitor ASR, contrary to the parties' good faith obligations under the October Minutes;

- e. Rana does not deny that he has failed to provide Paul with sufficient information to monitor the petty cash, contrary to the UB Minutes;
- f. Rana does not deny that certain bank statements provided to Paul as part of the monthly disclosure package were missing pages;
- g. Rana does not dispute Paul's responding evidence concerning ASR's steeper decline in revenue in comparison to ProEx and the trucking industry in general;
- h. There is no document demonstrating any legitimate relationship between ASR and Motion;
- i. Rana's son presented himself as a part-time employee of Motion who was to be paid a lump sum at the end of his service, but he presented no documents in this regard and continued to draw a salary from ASR during this period;
- j. Rana could not reconcile any of the conflicting QuickBooks records which demonstrated that ASR paid a driver, Mr. Narinder Singh, while the latter was working for Motion. Rana suggests that these payments were an advance to assist Narinder maintain his work visa but the payments are not characterized as an advance in QuickBooks and there is no corroborating documentary evidence confirming whether Narinder was also paid by Motion during this time; and
- k. Rana could not properly explain the incident at the Petro Station with his son, and Mr. Singh.

4. Injunctive Relief

233. Paul submits that the appropriate legal test was initially applied in granting injunctive relief, and objects to Rana's bald assertion that there is no evidence of irreparable harm and no evidence that Rana would alter the records of ASR.
234. Rather, Paul asserts that Rana has admitted in his affidavit that his staff did amend the books and records of ASR, which Paul submits is a clear violation of the injunction and sufficient to warrant its continuation until the inspector is done the inspection.

VII. ANALYSIS

A. JURISDICTION TO ISSUE AN EX PARTE AWARD PURSUANT TO OBCA

235. It is trite law that my jurisdiction to grant any relief is determined by the terms of the arbitration clause agreed to by the parties.
236. Paragraph 22 of the October Minutes provide as follows:

22. 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 from among the resident or member arbitrators associated with Arbitration Place in Toronto or alternatively any other person who is a retired judge of the Ontario Superior Court of Justice or Ontario Court of Appeal (the "Arbitrator") to determine any such dispute acting as arbitrator pursuant to the provisions of the Arbitration Act, 1991, S.O. 1991, c. 17 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.

(My emphasis.)

237. The parties evidenced their agreement to confer upon me as the appointed arbitrator, final and binding jurisdiction of “any dispute” arising in respect of the completion or implementation of the October Minutes. Since 2018 the parties have attorned to the exercise of that jurisdiction on several occasions, including for relief in the nature of injunctive relief, whether or not any underlying claim had been commenced. For example, the first motion brought by Paul in November 2018, without any underlying claim, sought to compel Rana to use RGC Group funds to finance ProEx’s cash flow shortage. Similarly, in January 2020, the parties agreed to have me adjudicate, on an urgent basis, an access issue in respect of real property in India.

1. *Authority to Grant Ex Parte Relief*

238. In light of my conclusion above at paragraphs 47-53 concerning my jurisdiction to hear Rana’s motion to review the *ex parte* Award, both parties have now had an opportunity to make submissions regarding the appointment of an inspector as contemplated in the *ex parte* Award. Therefore, any concerns of a denial of natural justice which discourages *ex parte* proceedings, have been addressed.

239. No harm nor prejudice has been caused to Rana by Paul having proceeded on an *ex parte* basis as Rana has now been afforded a full opportunity to present his position and be heard.

240. In addition, I similarly conclude that the broad language of the parties’ arbitration agreement, together with the historical circumstances of the parties’ dispute and the lack of explicit limitations on my authority, is sufficient to authorize the award of *ex parte* relief.

241. Rana argues that there is nothing in the arbitration agreement that allows a party to seek *ex parte* relief, and therefore, absent explicit authority, such relief is contrary to various provisions of the Arbitration Act. He refers me to the decision in *Farah*, above.

242. In *Farah*, the Court states that whether an arbitrator may proceed *ex parte* depends on the agreement of the parties. That case does not require such agreement to be explicit.

243. The Court in that case did find that the arbitrator lacked authority to grant *ex parte* relief, but what was determinative of the issue was not the lack of explicit authority granting *ex parte* jurisdiction as much as the fact that the parties had explicitly agreed through reference to Rules 8 and 11 of the ADR Chambers Arbitration Rules that they were prohibited from communicating *ex parte* with the tribunal, and that they were only allowed interim measures of protection on notice to all other parties (see *Farah* at paragraphs 77-79). In *Farah*, the parties turned their minds to the explicit exclusion of *ex parte* relief. That decision is not helpful to the current analysis.
244. The provisions of the Arbitration Act identified as relevant to my authority to grant *ex parte* relief are as follows:

Equality and fairness

19 (1) In an arbitration, the parties shall be treated equally and fairly.

(2) Each party shall be given an opportunity to present a case and to respond to the other parties' cases.

Procedure

20 (1) The arbitral tribunal may determine the procedure to be followed in the arbitration, in accordance with this Act.

....

Hearings and written proceedings

....

26 (2) The arbitral tribunal shall give the parties sufficient notice of hearings and of meetings of the tribunal for the purpose of inspection of property or documents.

(3) A party who submits a statement to the arbitral tribunal or supplies the tribunal with any other information shall also communicate it to the other parties.

(4) The arbitral tribunal shall communicate to the parties any expert reports or other documents on which it may rely in making a decision.

....

Application of law and equity

31 An arbitral tribunal shall decide a dispute in accordance with law, including equity, and may order specific performance, injunctions and other equitable remedies.

245. In the present case, while there is no explicit grant of authority to issue *ex parte* relief, there are similarly no related limitations on my authority. Rather, the parties agreed that “any disputes arising out of the completion or implementation” of the October Minutes would be determined by arbitration on a summary basis in accordance with the Arbitration Act.

246. The parties have previously relied on this broad language to refer to me disputes requiring exceptional relief, and I find that given the lack of specific exclusion or reference to provisions in the Arbitration Act that would impede my ability to award exceptional *ex parte* relief, the parties intended to vest me with the authority, in the appropriate circumstances, to grant *ex parte* relief.

2. Authority to Grant OBCA Remedies

247. I conclude that the Ontario authorities support my arbitral jurisdiction to grant a statutory remedy pursuant to the OBCA.

248. Rana relies on the *Pandora* and *Armstrong* decisions for the proposition that arbitrators cannot grant statutory remedies under the OBCA. The secondary argument he makes is one of privity, namely that as a third party, any inspector is necessarily outside the scope of my authority, which is limited to the parties to the arbitration agreement.
249. Disposing of the second concern first, I note, and Paul concedes, that no inspector will be compelled to investigate ASR, rather the inspector will have to agree. Once the inspector agrees to the appointment, it becomes a party to these proceedings *by agreement* and therefore within the scope of my authority. In any agreement appointing the inspector, the scope of my supervisory authority can be addressed.
250. Where either party seeks relief that involves true strangers to the arbitration, like Motion, the *ex parte* Award and Order make clear, and I am reiterating here, that such relief must be sought before the Superior Court of Justice.
251. In respect of my authority to grant statutory remedies pursuant to the OBCA as between the parties to this arbitration, the weight of the Ontario jurisprudence supports a finding of authority.
252. Sections 161-162 of the OBCA refer explicitly to “the court” defined in section 1 of the OBCA to mean “the Superior Court of Justice.”
253. Section 248, which deals with the oppression remedy also refers explicitly to a complainant applying to “the court” for relief.
254. Notwithstanding this statutory language, as noted by Justice Wilton-Siegel in his 2018 decision in *The Campaign*, above, “the law is now well established that parties can agree to adjudicate oppression claims by way of arbitration...” (paragraph 59). In support of this proposition, Justice Wilton-Siegel refers to the 2014 Superior Court decision in *Blind Spot* which I return to below.
255. In *The Campaign*, similar to the present case, the applicable arbitration agreement does not explicitly refer to statutory remedies as being within the scope of the arbitrator’s

powers. As with the parties' agreement to resolve "any dispute" by arbitration in the present case, in *The Campaign*, that agreement provided for resolution by arbitration of "a dispute or controversy... arising out of or related to the articles or By-laws, or out of any aspect of the operations of the Society ...not resolved in private meetings..." (see paragraph 47).

256. In *Blind Spot*, above, the Superior Court found that where an arbitration clause provided for the arbitration of "dispute[s]... relating to the ... implementation of any of the provisions of" the Shareholders' Agreement" even where a party's complaints were "couched in the language of the oppression remedy under *OBCA* s.248" they fell within the scope of the arbitration clause.
257. The present arbitration clause applies to "any dispute arising in respect of the completion or implementation" of the October Minutes, and in my view, consistent with *The Campaign* and *Blind Spot*, is broad enough to encompass the arbitration of statutory remedies provided by the *OBCA*.
258. Rana relies on *Armstrong*, above, wherein he says the Ontario Divisional Court upheld the arbitrator's decision that he did not have jurisdiction to grant statutory remedies under the *OBCA*.
259. I note that the *Armstrong* decision was decided in 2000, well over a decade prior to *The Campaign* and *Blind Spot*. Most importantly, however, as the Divisional Court notes in *Armstrong*, neither party took any issue with the decision of the arbitrator that he lacked jurisdiction to grant remedies pursuant to the *OBCA* (see paragraph 21) – that issue was not in dispute before the Court.
260. Notwithstanding this, the Divisional Court went on to state, prescient of Justice Wilton-Siegel's 2018 determination, that "[i]t is open to shareholders, by agreement, to choose arbitration as the sole means of resolving their disputes and thus, absent extraordinary circumstances as in *Deluce Holdings*, discussed below, to oust the jurisdiction of the court to entertain oppression remedy proceedings under the *OBCA*. ..." (see paragraph 22).

261. At paragraph 26 of its decision, the Divisional Court explained that in *Deluce*, referring to *Deluce Holdings Inc v Air Canada* (1992), 12 OR (3s) 131 (Ont Gen Div [Commercial List]), there “was no general “resort to arbitration” clause...” and the Court in *Deluce* found that Air Canada’s resort to arbitration in that case was oppressive.
262. In the present case there is a general resort to arbitration clause and there is no argument, let alone evidence, that resort to arbitration for the appointment of an inspector is for any oppressive or vexatious reason, or is an abuse of process. Absent these criteria, there is no reason to interpret the parties’ arbitration agreement to exclude statutory remedies pursuant to the OBCA.
263. Hence, I conclude that the *Armstrong* decision from the year 2000 does not support Rana’s position on the facts before me in 2020.
264. Similarly, the decision in *Pandora*, is distinguishable. It was rendered in 2007, also prior to *The Campaign* and *Blind Spot*. Moreover, Justice Lax did not conclude, as suggested by Rana, that statutory remedies under the OBCA are the exclusive jurisdiction of the courts. Consistent with *Farah*, she concluded that the arbitration clause could, but did not in that case, contain language that would encompass the determination of statutory obligations and remedies pursuant to the OBCA (see paragraph 20).
265. It is important to note that in *Pandora*, the agreement in question was a subscription agreement that contained “inconsistent mechanisms for the resolution of disputes” (see paragraph 4).
266. On the one hand, it contained a choice of law and forum clause providing state and federal courts in New York with exclusive jurisdiction over the parties’ disputes which were also to be governed by New York law.
267. On the other hand, it contained an arbitration clause providing that “any dispute ... arising out of, relating to or in connection with the Company [i.e. SREI] or this subscription Agreement or the Subscriber’s investment in the Company ... shall be resolved

exclusively by arbitration to be conducted in New York, New York, in accordance with the rules of the American Arbitration Association. ...” (see paragraph 3).

268. After a dispute arose between the parties related to the purportedly inadequate financial reporting made by the company to its investors, the Applicants, subscribers in the Company, sought an Ontario oppression remedy and the appointment of an inspector pursuant to the OBCA.
269. Justice Lax determined that the arbitration clause was insufficient to oust the Ontario Court’s jurisdiction to award remedies under the OBCA, because, *inter alia*, “if the arbitration clause prohibits the Applicants from seeking judicial enforcement of SREI’s core obligations [financial disclosure under the OBCA], it is likely the case that there is no forum to which the Applicant can turn to enforce those core obligations, thereby rendering the obligation nugatory.”
270. The same concern does not apply in the present case. The arbitration clause in issue is not inconsistent. Additionally, it does not force the parties to apply foreign law in a foreign forum, and there is no concern that in referring the request to arbitration, one party will be deprived of its statutory rights.
271. For the foregoing reasons, therefore, I conclude that I do have the jurisdiction to award statutory remedies, and in particular to appoint an inspector in accordance with sections 161-163 of the OBCA.
272. Rana also referred me to the British Columbia decisions in *ABOP* and *Elton*, above. Given Paul’s request for relief pursuant to the OBCA, the British Columbia jurisprudence cannot outweigh the established legal principles arising out of Ontario case law, dealing specifically with the OBCA.
273. For the sake of completeness, however, I note:
 - a. These decisions concern the *Canada Business Corporations Act* not the OBCA and the British Columbia *Commercial Arbitration Act* not the Ontario *Arbitration Act*.

- b. While there are comments in both decisions that certain statutory rights, such as the finding of oppression and the appointment of a receiver or inspector under the *Canadian Business Corporations Act*, are within the exclusive jurisdiction of the Court, the issue before the Court was whether to stay the proceedings in favour of the parties' arbitration clause, which they did in both cases. The arbitrator's jurisdiction to award those statutory remedies was not the primary issue.
- c. At least in *Elton*, above, the British Columbia Supreme Court notes that there is a difference between the jurisprudence in British Columbia and the jurisprudence in Ontario in respect of an arbitrator's jurisdiction to award statutory remedies. Specifically, Justice DeWitt-Van Oosten of the British Columbia Supreme Court cites the *Pandora* and *Blind Spot* decisions referred to above, noting in her opinion, that "[t]he Ontario authorities appear divided on this issue [of arbitrator's jurisdiction to award statutory remedies]" (see paragraphs 81-82 in *Elton*, above).
- d. For the reasons already provided, I do not think *Pandora* and *Blind Spot* are necessarily inconsistent – Justice Lax in *Pandora* was appropriately concerned with the arbitration clause effectively denying a party its statutory rights. That is not the issue in *Blind Spot* nor in the present arbitration.

274. Given my conclusion, I do not also need to determine my authority to appoint an investigator pursuant to the *Courts of Justice Act*, which has not been considered as support for my jurisdiction.

B. ADVERSE INFERENCES

275. Before considering other arguments, I need to make a few observations concerning the evidentiary record. Specifically, I note that where a party possesses relevant evidence that it does not produce, an adverse inference may be drawn.

276. In the present case, where Rana baldly disputes an allegation put forward by Paul concerning the operations of ASR, I find it difficult to understand why he did not fortify his objection with corroborating documentary evidence. He is the person with access to all of ASR's books and records, and I find the absence of such evidence, as detailed above, concerning to say the least.
277. Paul is supposed to receive financial disclosure on the 15th of each month in respect of ASR, in exchange for this disclosure, Paul has no independent access to the books and records of ASR.
278. In his initial affidavit, Paul provided evidence concerning the incomplete monthly disclosure made by Rana, to which Rana did not respond. Moreover, Paul swore evidence concerning the ongoing lack of access to various informational portals which were supposed to have been provided to Paul as early as April 2019, and which access was a term of the UB Minutes; none of which was responded to by Rana.
279. The evidence that Rana delivered in response to Paul's concerns raise more questions than answers. As noted above, in a number of cases, where one would expect there to be documentary corroboration, none was provided, and much of Rana's evidence, and the evidence presented in support of his position, lacks an air of reality.
280. For example, Rana has asserted, without meaningful documentary support or any substantiation that one would expect to be available to him as the sole operator of ASR, the cause and source of ASR's revenue decline.
281. Specifically, the evidence relied upon by Rana includes a selection of lane cancellation notices from Ford, a spreadsheet presumably created by ASR staff detailing the decline in revenue from 2018-2019, without supporting documents, and e-mails between a representative of ASR, Mr. Dave Rawn, and a number of ASR customers wherein Mr. Rawn purports to confirm in writing a conversation ostensibly between him and the recipient of the e-mails wherein the ASR customers confirm a decrease in their freight volumes. Neither Mr. Rawn nor the recipients of his e-mails were witnesses on the present motion, and Rana confirmed that Mr. Rawn reached out to these customers in

response to the concerns raised by Paul in his *ex parte* motion record in respect of ASR's declining revenue. Rana admitted that he was not a part of the telephone conversations referenced in the e-mails and he confirmed that he has no knowledge as to what was discussed.

282. The only other documents relied upon by Rana to explain ASR's decline in revenue is a single Business Insider article from 2019 and a spreadsheet, presumably prepared by someone at ASR, comparing the decline in revenues between ASR and ProEx, without supporting documentation.
283. In addition to Rana's failure to adequately respond to the issues raised by Paul particularly given that Rana operates the day-to-day business of ASR, I find that there is an objective informational imbalance between the parties for the same reason. Paul is restrained by the Order of Justice Wilton-Siegel from attending at, or interfering with, the business of ASR. These realities necessarily impact the evidence that Paul can be expected to have delivered in support of his motion. In fact, the purpose of the *ex parte* motion was to appoint an inspector to investigate the day-to-day operations of ASR and provide Paul with the information and oversight the parties agreed to in the October Minutes precisely because Rana has not complied with the terms.
284. Rana and/or his witnesses could have, but chose not to deliver objective evidence in respect of ASR's relationship with Motion, as a result of which I make an adverse inference and presume that the evidence that has not been produced does not support Rana's position. In particular, I make an adverse inference in respect of the following:
 - a. The lack of documented or demonstrable terms of Subeet's employment with Motion,
 - b. The lack of evidence concerning Subeet's remuneration from Motion, as ASR was said to have stopped paying him sometime after the COVID-19 pandemic in the Spring of 2020,

- c. The lack of documentation related to the circumstances of the lending or transfer of equipment between ASR and Motion,
- d. The lack of evidence of Motion reimbursing Subeet \$150 for fuel said to have been paid by him in cash on June 6, 2020,
- e. The lack of evidence concerning reasons for the increased payments by ASR to Border Bound in June 2018,
- f. The lack of evidence in respect of Motion paying Narinder Singh,
- g. The lack of evidence of any contractual relationship between Border Bound and Motion, and
- h. The lack of evidence from the ASR bookkeeper who would have had firsthand knowledge of the matters to which Rana testified.

C. FULL AND FRANK DISCLOSURE

285. The parties are generally in agreement as to the applicable legal principles of disclosure when seeking *ex parte* relief.
286. The moving party “must make full and frank disclosure of the relevant facts, including facts which may explain the defendant’s position if known to the plaintiff.” See *Friedland*, above, at paragraph 30, citing *Chitel v Rothbart* (1982), 39 OR 2d 513.
287. Full and frank disclosure imposes “high obligations of candour and disclosure” and requires the moving party to present “points of fact or law known to it that favour the other side” (see *Boal*, above, at paragraph 59).
288. It is insufficient to simply attach relevant documentary evidence to the moving party’s affidavit, material facts must be revealed or highlighted. Where a party fails to comply with this duty the *ex parte* order may be set aside (see *Friedland* at paragraphs 28-29).

289. In the event of non-disclosure of a material fact, whether to set aside an *ex parte* order is determined on the basis of whether the omitted disclosure might have had an impact on the original order (see *Two Tyme*, above at paragraph 20). What is a material fact is determined objectively, not on the subjective understanding of the moving party (see *Boal*, at paragraph 59).
290. In addition to the above it is important to note that the disclosure duty is not to be applied too rigidly, and “[a] plaintiff should not be deprived of a remedy because there are mere imperfections in the affidavit or because inconsequential facts have not been disclosed” (see *Friedland* at paragraph 31).
291. Absent a finding of intentional non-disclosure, there remains a residual discretion to decline to set aside an *ex parte* order even where a failure to make full and frank disclosure is found (see *Two-Tyme* at paragraphs 20-21).
292. Rana sets out a long list of what he describes as material non-disclosure. First among them is Paul’s failure to disclose binding case law regarding my lack of jurisdiction. Given my conclusion above, I disagree that this constitutes material non-disclosure.
293. In respect of the specific allegations of factual non-disclosure, my original conclusion granting Paul relief has only been fortified upon a close review of the comprehensive responding records filed on this current motion. It is even more clear from the material filed by Rana, and the cross-examinations, that Rana has perpetuated a lack of transparency into the operations of ASR, and a lack of good faith in providing the financial, operational and other relevant information required to secure the sale of the Trucking Business.
294. For example, I note that Rana did not provide any evidence in response to the specific allegations from Paul that:
- a. Paul did not receive draft financial statements for ASR in accordance with the parties’ agreement;

- b. Rana provided incomplete banking statements as part of his monthly financial disclosure;
 - c. Rana did not provide the records sufficient to enable Paul to monitor the petty cash as required by the UB Minutes; and
 - d. Rana still has not provided Paul with full access to the information portals described at paragraph 5 of the UB Minutes.
295. Rana similarly failed to explain why repair and maintenance costs increased for ASR at a time when revenue was in decline. He also did not present any reasonable explanation or documentary record himself, or through his witnesses, to dispel the suspicion of an inappropriate link between ASR and Motion. For example, there were no details provided concerning Subeet's role with Motion, there were no records for the equipment borrowed by Motion from ASR, there were no records confirming whether ASR drivers who worked for Motion were ever paid by Motion, and there was no explanation for the increase in fees paid by ASR at Border Bound shortly after the incorporation of Motion in May 2018.
296. In noting Subeet's involvement with Motion, I have no information in respect of Subeet Carriers Inc, apparently a corporation included in the Respondent's group of companies.
297. Rana had a fulsome opportunity but failed to present evidence to contradict the allegations of Paul. I find that Rana has failed to comply with his disclosure obligations under the October Minutes and reiterated in the UB Minutes.
298. I also reject Rana's criticism of Paul's non-disclosure of aspects of Mr. Colbourn's evidence in the *ex parte* motion record. Many of Rana's allegations are unfounded. For example, contrary to Rana's assertion, Paul did identify that transfers of equipment from ASR to Motion happened both directly and indirectly, i.e. through resellers. Other purported non-disclosures are of little, if any, consequence. For example, Paul did not initially disclose Mr. Singh's presence at the Petro Station on June 6, 2020, but his being there does not assist Rana or undermine Paul's concerns at all. To the contrary, Mr. Singh

and Subeet's evidence in respect of their interaction only begs more questions as to the relationship between ASR and Motion. Furthermore, where Rana states that Paul ought to have disclosed a variety of "industry practices," to explain ASR's allegedly suspicious conduct. It is far from clear that there are in fact industry practices as identified by Rana. Even if there were, however, any purported industry practice does little to address the concerns of Rana's impropriety. I return to this below.

299. I find that the general criticisms raised by Rana are not substantive nor material to my decision. The evidence from the private investigator is not determinative in and of itself of any issue in dispute, but initiated this process within which the brothers have now had an opportunity to address suspicious operations of ASR. It is the parties' responding evidence, which I address herein, that fortify the original *ex parte* Award and Order and that I rely on in reaching my current conclusions.

300. I turn now to the specific allegations of insufficient disclosure.

1. *Well-Known Practices and Trends in the Trucking Industry*

301. Rana provided evidence of what he refers to as well-known practices and trends in the trucking industry, including the sale of assets in the ordinary course of business, the use of trucking yards by numerous trucking companies, the designation of drivers as independent contractors, and the lending and borrowing of equipment to other trucking companies.

302. Aside from Rana's evidence that these are well-known practices, he provided no expert report nor corroborating evidence for his views. However, even if demonstrated to be industry practice on the basis of cogent and admissible evidence, such practices would not establish the particular ASR conduct as being in the ordinary course of business rather than for some collateral and improper purposes.

303. For example, while I may accept that in the ordinary course of business, ASR and other trucking companies engage in the sale or purchase of assets, what is suspicious in the current circumstance is that since the incorporation of Motion in May 2018, ASR just

happened to transfer, directly or indirectly, 13 of its assets to Motion. The concern is amplified because both Rana and Mr. Dhindsa professed to have no knowledge that these assets were exchanged between their two companies, despite being friends for many years and across continents, and despite Mr. Dhindsa's company being operated by Rana's son since November 2019.

304. Similarly, Mr. Dhindsa, who said that he has been retired since August 2017, could not provide a clear answer as to what Motion was doing between May 2018 and December 2019 when it commenced business operations. Despite being the sole owner and director, Mr. Dhindsa could not explain basic aspects of Motion's finances, including how it was able to purchase assets from ASR prior to December 2019 when it first started engaging in revenue generating activity, as well as after the onset of COVID-19 at which time Mr. Dhindsa said Motion did not have sufficient funds to pay its monthly rent to Border Bound. Mr. Dhindsa similarly provided no evidence of how Motion will operate after Subeet resigns, which he has ostensibly done at the end of August, shortly after the hearing of this motion.
305. In respect of the use of the Border Bound Trucking Yard by both Motion and ASR, again, I may accept that trucking yards are typically used by numerous arm's-length trucking companies, but Rana's evidence does not help resolve the suspicion that ASR and Motion may be improperly interconnected. Specifically, according to Rana, ASR has been paying rent to Border Bound since January 1, 2017. Until May 2018, the paid rental amounts set out in the record are small, less than \$250. However, in May 2018, coinciding with the time Motion is incorporated, ASR begins paying Border Bound \$2,260 per month. Rana does not provide any explanation for that increase. That raises suspicions of whether ASR is paying rent at Border Bound for Motion, which Rana could have, but did not address.
306. Mr. Dhindsa's evidence only further muddies the water. According to Mr. Dhindsa, Motion negotiated rent at Border Bound commencing around the onset of the COVID-19 pandemic in March 2020 for approximately \$1,000 per month. However, Mr. Dhindsa advised that Motion has been unable to pay rent due to cash flow issues as a result of the

pandemic. I note that no invoices or communications between Motion and Border Bound were included with Mr. Dhindsa's affidavit.

307. Moreover, Mr. Dhindsa also confirmed that in May 2020, at the time of Motion's purported cash-flow shortage, Motion purchased an ASR trailer for an undisclosed amount from a re-seller, Next Truck, which the evidence from Rana demonstrates was sold to Next Truck for \$15,500. Remarkably, according to Mr. Dhindsa, the fact that it was an ASR trailer was unknown to him. In addition to it being implausible, in my view, that Mr. Dhindsa was unaware that the equipment being purchased originated with ASR, there is no evidence from where Motion would have had the funds to purchase such expensive equipment and if Mr. Dhindsa is otherwise to be believed Motion was, at the same time, unable to pay Border Bound. The suggestion that Mr. Dhindsa may have used his personal funds from time to time cannot be accepted as he provided no corroborating evidence.
308. Rana's evidence in respect to the borrowing and lending of equipment between ASR and Motion is similarly unsatisfying. I do not accept Rana's evidence that in the normal course of business, purportedly arms-length competitors such as ASR and Motion would lend each other equipment without any record of a fee for use or sufficient documentation and insurance arrangements. As well, I reject the evidence of Mr. Peet to the extent that he suggested that it is normal practice for competitors to lend each other equipment. He is only a driver and had no knowledge of any Motion and ASR arrangement or the terms thereunder.
309. Rana and Paul both acknowledge that there is a practice of lending or borrowing equipment where a customer is also a trucking company and may require use of a trailer or truck while completing paid work. This seems reasonable and makes commercial sense. However, this is not the situation between ASR and Motion. Despite Rana's opinion to the contrary, based on the evidence before me, including that of Subeet, I find ASR and Motion to be competitors in the trucking industry.

310. I also note that in explaining Mr. Narinder Singh's use of ASR trucks and trailers while working for Motion, the explanation was not that it was common practice in the industry, but that due to exceptional concerns related to Narinder's work visa he thought it prudent to use ASR trucks.
311. The additional evidence in respect of Narinder raises further concerns. The evidence in respect of why ASR continued to pay Narinder while he was working for Motion is less straightforward. According to Rana, Subeet, and Narinder, ASR provided Narinder with "advances" of his pay to keep him on payroll with ASR to avoid issues with his work visa. While there is a promissory note produced wherein Narinder apparently agrees to repay ASR, there is no documentary proof that repayment has been made, and more suspiciously, despite his evidence that he was also paid by Motion, neither Narinder, nor Mr. Dhindsa or Subeet provided records of any payment from Motion to Narinder.
312. I note here that I must reject the evidence of Narinder Singh. He has been beholden to Rana and ASR which are complicit in entering into questionable arrangements for immigration purposes. I find his evidence to be unreliable as a possible accommodation to his employer, Rana and ASR.
313. Mr. Peet also testified that he drove an ASR truck in March 2020 while working for Motion. While he seemed to suggest that this was not uncommon between trucking companies, there is no basis to conclude that this was any more of an industry practice than an unexplained ASR accommodation to benefit Motion, which Subeet confirmed to be a competitor
314. Lastly, while I accept that drivers may tend to be independent contractors within the trucking industry, I do not agree that Paul's failure to highlight that in the *ex parte* motion is material. The issue before me is not the drivers' characterization or ability to work for multiple companies, but whether a particular driver working for both ASR and Motion is something that ought to have been disclosed to Paul as a person contractually entitled to transparency in the business's operations and as a person with a recognized interest in the Trucking Business.

315. I find that the information dealing with the sharing of drivers between ASR and Motion, including payment arrangements and the use of ASR equipment ought to have been but was not disclosed to Paul, particularly given the evidence of ASR's "reluctance" since 2019 to allow any drivers to work for ProEx because it purportedly could not risk losing any of its drivers. I note that ASR's "reluctance" flies in the face of the April 2018 Consent Order of Justice Wilton-Siegel by which the bothers agreed that Rana is restrained from interfering with Paul's ability to access staff employed by or associated with RGC Group for the purpose of carrying out the business of ProEx.
316. For the foregoing reasons, there is insufficient evidence of what Rana contends are well-known industry practices, and even were I to accept Rana's evidence of the existence of industry wide practices, I disagree that the failure to identify such practices in Paul's *ex parte* motion constitutes material non-disclosure by Paul.

2. Remaining Material Non-Disclosure

317. In addition to the above, Rana argues that Paul ought to have disclosed the ASR declining revenue trends as well as ProEx's declining revenues, and that the failure to do so suggested improperly that ASR's decline in revenue must be due to the improper shifting of its business to Motion.
318. Considering Rana's evidence at face value does not impact the *ex parte* Award or Order.
319. Consistent with Rana's own evidence, Paul asserts that the decline in ProEx's revenue between 2017-2018 is due largely to the agreed upon transfer of its business with TST to ASR.
320. Rana provided no response to this, and therefore no explanation for why ASR's decline in revenue not only coincided with the incorporation of Motion, but greatly exceeded the decline in revenue experienced by ProEx.
321. In respect of the purported industry-wide decline in revenue, as expected, each party was able to point to secondary sources seeking to undermine the other's position. I conclude

that nothing turns on the industry revenue trends, and therefore I decline to make any finding in that respect in the absence of qualified expert evidence.

322. In respect of the allegation that Subeet, Rana's son was operating Motion, the evidence remains opaque. Subeet had no prior work experience in the trucking industry and apparently worked for Motion part time. It is clear, however, that Subeet was in fact the dispatcher for Motion and the point of contact for its drivers. Based on Mr. Dhindsa's evidence, Subeet seemed to be in charge of the day-to-day operations of Motion. Rana does not dispute that Subeet had not, at the time of the hearing, received any remuneration from Motion. It is not contested that he continued to receive monthly remuneration from ASR between at least November 2019 and March 2020. I accept that both Rana and Paul had previously advanced salaries to their children, but am concerned by the lack of transparency in respect of the arrangement between Subeet and Motion at a time when Subeet worked for Motion, but continued to receive remuneration from ASR. There are no details concerning the scope of Subeet's role and any purported remuneration from Motion, including the amount he is yet to be paid.
323. In respect of the use of ASR funds to refuel Motion trucks, and specifically the incident at the Petro Station on June 6, 2020, I similarly disagree that Paul did not make full and frank disclosure.
324. I accept that it was not initially disclosed that Mr. Singh was at the Petro Station on June 6, 2020, but his presence is not the complete answer Rana purports it to be in respect of Paul's suspicion that ASR funds were used to refuel a Motion truck.
325. In particular, Mr. Singh's evidence evolved continuously throughout these proceedings. First, he made no mention of having refueled a Motion truck for Subeet who was also at the Petro Station that morning. According to Mr. Singh's first affidavit he refueled an ASR truck and reefer van at the Petro Station at 9:11am and 9:26am. Upon disclosure of a video of Mr. Singh refueling Subeet's Motion truck in or around 9:26am, Mr. Singh revised his evidence to explain that Subeet had forgotten his gloves and asked Mr. Singh whom he just coincidentally encountered at the Petro Station, to refuel his truck.

According to Mr. Singh he was given \$150 cash from Subeet for the fuel, which was used to pay for the fuel inside the station.

326. Upon further challenge, because Mr. Singh can be seen on a video swiping a card at the pump, Mr. Singh changed his evidence again, suggesting that he borrowed a pass card from the attendant that morning to use to swipe at the pump and then he went into the station to pay cash.
327. Needless to say, I am not able to accept any of Mr. Singh's evidence on this point and find it of no consequence that his presence was not highlighted in Paul's initial affidavit. I am similarly unconcerned by Paul's failure to note the timing discrepancies between the video surveillance and the fuel receipts on June 6, 2020. At minimum, Subeet, Rana and Mr. Singh were at the Petro Station refuelling a Motion truck around 9:26am, being the same time that a receipt was issued for the use of the ASR fuel card. Subeet's evidence that he submitted a receipt to Motion for reimbursement was simply not corroborated and is inconsistent with the versions of events advanced by others.
328. Finally, in respect of the issue concerning the private investigator's access into ASR vehicles, I understand Rana's concerns regarding the lawful authority to do so, but decline to set aside the *ex parte* Order on that basis. I am in no position to assess whether the access was an unlawful trespass.
329. There is no question that the parties intended to share in the ownership, including the benefits and liabilities of each of the entities of the RGC Group, equally. The October Minutes are explicit that this principle of equality governs the parties' settlement agreement.
330. Whether or not this is sufficient at law to enable Paul to authorize entry into ASR property is irrelevant for the present purposes. I find that Paul had ostensible entitlement and believed he had the authority to do so. Moreover, I conclude that Paul did not intentionally hide the fact that he authorized investigators to enter ASR trucks. It is clear that he was the instructing client, whether through counsel or otherwise, and upon request

he made full disclosure of Mr. Colbourn's file to Rana, and readily acknowledged that he provided the authorization to investigate ASR's equipment.

331. Nothing in my Award or Order relies on the evidence of Mr. Colbourn purportedly retrieved improperly, and even if there was an unlawful trespass that may have constituted non-disclosure, its non-disclosure was not intentional and even if disclosed, it would not have altered my determination, and in any event, I would exercise my discretion not to set aside the *ex parte* Award and Order on that basis.
332. I cannot agree that Paul failed to provide full and frank disclosure as required of all material facts. His affidavit and the corresponding exhibits were comprehensive and set out the information reasonably known to Paul at that time. I recognize that certain facts were contained in the comprehensive motion record but not highlighted in Paul's affidavit, however the standard on the *ex parte* motion is not one of perfection, and I do not find that those facts, if highlighted would have had any impact on the original order.
333. Even if some of the omissions in Paul's affidavit may have been material, having now considered the evidence as a whole, including that of Rana which fortifies Paul's claim for relief, I would in any event exercise my discretion to not set aside the *ex parte* Award and Order.

D. THERE ARE GROUNDS TO APPOINT AN INSPECTOR

334. I am satisfied on the record before me that Paul has standing under the OBCA given his 50% interest in RGC, including ASR, "as owner, director or directing mind."
335. Specifically, the October Minutes provide that:

Paul and Rana agree that [the October Minutes] shall be interpreted in accordance with this underlying principle that they each own a 50% interest in the Trucking Business and the Real Estate Business and each share equally in all of the liabilities incurred in the ordinary course of the operation of the Trucking Business and the Real Estate

Business as owners, directors or directing minds, as the case may be.

(My emphasis.)

336. Having carefully reviewed the comprehensive response delivered by Rana, I remain convinced, perhaps more so now, that on the face of the material submitted “there is good reason to think that the conduct complained of may have taken place” (*Jones v Mizzi*, 2016 ONSC 4907 (*Jones*) at paragraph 13, citing *Consolidated Enfield Corp v Blair*, 1994 CarswellOnt 249 at paragraph 83).
337. Paul has made out a *prima facie* case of oppressive conduct.
338. Rana, despite being given a fulsome opportunity to do so, failed to respond to the allegations of obstructing Paul’s oversight of the financial operations of ASR, and the declining revenues evidenced by the reporting Paul has received.
339. In addition, however, the evidence in respect of ASR’s relationship with Motion raises more serious questions. It is clear that Motion has been operated by Rana’s son, Subeet, for all intents and purposes since November 2019. Mr. Dhindsa, the purported owner and director, provided no documentary records to assist in the present motion, and had little awareness of the operations of his own company. On his own evidence, Subeet takes care of that. There is no documentary evidence corroborating Subeet’s employment or termination from Motion, nor is there any corroborating evidence that Subeet was ever paid by Motion for his service during the same period he was being paid by ASR. Similarly, given the evidence of Mr. Dhindsa that he retired in August 2017, I find it unlikely that Mr. Dhindsa is operating Motion independently. In light of this, I find it highly suspect that 13 pieces of ASR equipment coincidentally ended up with Motion during periods of time when Mr. Dhindsa confirmed that Motion had either not begun business operations, or was experiencing cash-flow issues preventing it from paying routine operating costs, let alone making sufficient revenue to afford costly equipment.

340. In addition if it is to be found that the ASR transactions by Rana were not in the ordinary course of business, that might be a breach of the April 2018 Consent Order of Justice Wilton-Siegel, by which the brothers agreed that both Paul and Rana are restrained from, directly or indirectly, selling, transferring or otherwise disposing of any of the assets owned by the RGC Group, including transferring money out of any RGC Group bank account, outside the ordinary course of business without express written consent of the other party.
341. Further, there are unresolved and undocumented questions concerning increased ASR payments to Border Bound, ASR payments to Narinder Singh and Subeet while working for Motion, and ASR vehicles used by Motion.
342. On balance there are substantive reasons for me to believe there is more than an arms-length competitive relationship between ASR and Motion that Rana would not acknowledge. An inspector's investigation could confirm or dispel that belief and afford to Paul disclosure of information to which he is entitled.
343. In respect of Rana's argument that the *ex parte* Order be set aside due to credibility concerns on both sides, I find that he has failed to identify legitimate credibility concerns in respect of Paul. Rana seems to rely on his same allegations of non-disclosure to suggest that Paul is not credible. For the same reasons articulated above, I reject this argument.
344. In reaching a conclusion I am mindful of the agreement and aspirations of this family seeking a full and final divorce of their business investments through "good faith" actions recognizing that they "each own a 50% interest in the Trucking Business and ... each share in all the liabilities incurred in the ordinary course of operation...". Where there are additional concerns arising out of the evidence on this now hotly contested motion, I am well satisfied on a balance of probabilities that the foregoing meets the requirements for the appointment of an inspector under the OBCA.

E. INJUNCTIVE RELIEF

345. For the same reasons set out above, I reject Rana's arguments in respect of my jurisdiction to grant Paul's *ex parte* injunctive relief and conclude that there are sufficient grounds to continue the injunctive relief until an inspector has been appointed and ASR's records preserved for use in the investigation.
346. As set out in the *ex parte* Award, the test for injunctive relief is well-established.
347. Paul is to establish on a balance of probabilities that: (1) there is a serious issue to be tried in the underlying arbitration; (2) he would suffer irreparable harm if the injunction is not granted; and (3) the balance of convenience favours granting the injunction. See *RJR MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311.
348. Rana objects to the injunction granted by the *ex parte* Award on two grounds: (1) the lack of an underlying claim, and (2) no evidence of irreparable harm.
349. I have been provided with no legal authority that requires a separate underlying action to have been commenced prior to injunctive relief being granted. In any event, the parties have authorized me to arbitrate their dispute arising out of the implementation of the October Minutes.
350. The October Minutes also require the parties to exchange financial, operational and any other information in good faith to ensure that an orderly sale of the Trucking Business proceeds in an open and transparent manner.
351. There is serious doubt as to whether Rana has provided the requisite information and cooperated in effecting the sale of the Trucking Business in accordance with the October Minutes.
352. Given the long history of obfuscation and Rana's own evidence that he did not provide ASR's accountant with the *ex parte* Order, or with instructions not to amend the books and records of ASR, there is a real concern that Paul would suffer irreparable harm if the records are altered or destroyed prior to the appointment and finding of the inspector

needed to assess whether there has been wrongdoing by Rana or to effect the sale of the Trucking Business.

353. Moreover, as explained at paragraph 40 of the *ex parte* Award, the balance of convenience favours granting the injunction:

The injunction is only for short period of time until the parties return before me or appear in Superior Court to determine the relevant scope of the investigation. Most importantly, it only requires Rana to do that which he has already agreed to do in the October Minutes, namely “act in good faith to provide [Paul] with financial, operational and any other information that is required to ensure that the events described in [the October Minutes] proceed in an open and transparent manner, including, but not limited to, information to allow the Parties to monitor the Trucking Business ... while the steps contemplated by [the October Minutes] are being implemented.”

354. I note that Paul initially agreed to provide security for the costs of the inspector should the appointment of the inspector be determined to not have been reasonable. In his responding affidavit, he revises this position, suggesting that if I Award the appointment of the inspector on the basis of the present comprehensive records of which both parties had notice, he would request that the costs of the inspector be paid by the RGC Group, or the individual parties equally, subject to any determination of costs following the results of the investigation. I decline to do so.

355. Pending the outcome of the inspection, the costs of the inspector shall be borne by Paul as initially determined subject to further costs submissions upon completion of the inspection if the parties are unable to then agree upon financial responsibility for the inspector’s services.

356. In order to ensure this matter does not languish, the parties shall have 30 days from the date of this Award, unless extended on consent of the parties or by further Award, to

secure the appointment of the inspector and to determine the scope of the inspection, either by return before me or the Superior Court of Justice if a party seeks to empower the inspector vis-à-vis strangers to this arbitration.

357. Paul shall have the same 30-day period to seek an extension of any injunctive relief, if so advised.
358. As an end note, I find it incredible that the relief ordered herein is necessary to have the parties abide by their agreements to date. It is time for a concerted effort by all professional advisors to assist the parties to promptly “achieve an orderly sale” of the Trucking Business as agreed in the October Minutes. In the absence of an effective effort and expeditious action, I may be spoken to, to fix a procedural timetable for the purpose of the sale of the Trucking Business and the balance of any outstanding obligations.

VIII. CONCLUSION

359. For the foregoing reasons, I dismiss Rana’s motion and conclude that:

- a. Rana has standing pursuant to the explicit language of the *ex parte* Order, or in the alternative section 44(1)(b) of the Arbitration Act to bring the present motion;
- b. It is not necessary to resolve the issue of admissibility of Amar Randhawa’s August 26, 2020 affidavit as it is not determinative of the issues before me;
- c. I had the authority to issue the *ex parte* Award and Order;
- d. I do have the jurisdiction to award statutory remedies, and in particular to appoint an inspector in accordance with sections 161-163 of the OBCA;
- e. Paul made full and frank disclosure of all material facts and even if he did not, I would exercise my discretion not to set aside the *ex parte* Award and Order, particularly in the context of and reflection upon the evidence addressed by Rana;

- f. Paul has standing under the OBCA given his 50% interest in RGC, including ASR, “as owner, director or directing mind” and has made out a *prima facie* case of oppressive conduct such that grounds exist for the appointment of an inspector pursuant to sections 161-163 of the OBCA;
- g. Paul shall pay the costs of the inspector subject to further costs submissions upon completion of the inspection if the parties are unable to then agree upon financial responsibility for the inspector’s services;
- h. The parties shall have 30 days from the date of this Award, unless extended on consent of the parties or by further Award, to secure the appointment of the inspector and to determine the scope of the inspection, either by return before me or the Superior Court of Justice if a party seeks to empower the inspector vis-à-vis strangers to this arbitration;
- i. Paul shall have the same 30-days from the date of this Award to seek an extension of any injunctive relief, if so advised; and
- j. Costs associated with this Award, including the costs of the *ex parte* Award and Order, shall be determined following completion of the inspection contemplated herein or upon submission if the inspector is not appointed within 30 days of this Award.

Dated at Toronto, this 26th day of October, 2020.



LARRY BANACK

APPENDIX “G”

[ATTACHED]

**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

AFFIDAVIT OF BALDEV DHINDSA

Affirmed June 3, 2021

I, Baldev Dhindsa, of the City of Brampton, in the Regional Municipality of Peel, SOLEMNLY AFFIRM:

1. I am the principal of Motion Transport Ltd. ("**MTL**"), and as such have personal knowledge of the matters to which I herein depose. Where my affidavit is based on information and belief, I have identified the source thereof and verily believe it to be true.
2. I make this affidavit in response to the receiver's motion for production, disclosure and the right to examine personnel connected to MTL.

PRODUCTION AND DISCLOSURE

3. As I have tried to indicate to the receiver, through my lawyer, Christina Bowman ("**Ms. Bowman**"), Motion Transport Ltd. was a very small operation and was only in business from May 2019 to March 2021.

4. Attached to my affidavit affirmed January 18, 2021 were MTL's financial statements and backup documentation from May 2019 to April 2020. Attached hereto and marked as **Exhibit 'A'** to this affidavit is a true copy of MTL's responding record, including my affidavit affirmed January 18, 2020 with the exhibits.
5. Exhibits C through D are MTL's financial records and accompanying source documents from the commencement of business in May 2019 to April 2020.
6. As the Profit and Loss Statement at Tab 'F' indicates, MTL only made approximately \$10,000 in its first year of operations.
7. As a result of the impact of Covid on the business and its general lack of profitability, MTL is no longer in operation.
8. It no longer has a physical office and all but one vehicle has been sold.

EQUIPMENT

9. With respect to the receiver's observation that the Ministry of Transportation's ("**MTO**") records show that MTL still owns six pieces of equipment, tractors and trailers: due to Covid, the Ministry's records, are not in fact up to date.
10. Until the previous owner's plates are brought into the Ministry's offices, which has been difficult to do since MTO offices have been closed for much of the last 15 months, the transfer of some pieces of equipment has not been recorded in the Ministry's records.
11. The Ministry has continuously extended the validity of various licenses and other things, including "license plate sticker validation", due to Covid and currently extensions are in effect to June 30, 2021. Attached hereto and marked as **Exhibit**

'B' is a true copy of a page from the MTO's website outlining the services which are extended.

12. Since approximately August 2020, there has only been one truck running and as of March 2021, it also ceased operation so MTL is no longer doing business. This truck is still registered in MTL's name; it is a 2015 black Volvo bearing unit number 1006. I am happy to provide the bills of sale if they are not already attached to my January 18, 2021 affidavit. Also, MTL's bank statements will show the payments for the equipment. Given the very brief time frame in which this motion was brought, I was not able to review and assemble the bills of sale relevant to these sales and bank statements in order to attach them to this affidavit but I can do so and provide them to the receiver if it helps.

MTL's "servers"

13. The receiver has requested access to MTL's "servers". The only electronic device that MTL used for its operations was a single laptop computer. The laptop went missing in the summer or autumn of 2020. I did not buy another.

14. The 'server' which the receiver may be referring to with respect to the financial statements, must be those of MTL's accountant, Swift Accounting. MTL has a single banker's box of paper financial records for the period of May 2019 to April 2020 which were the basis for the accountant's generation of the financial statements ("Box").

PAPER RECORDS

15. I have, through my lawyer Christina Bowman, offered to provide that Box of documents to the receiver but Ms. Bowman advises that shortly after making that offer, this motion was served on her office and no response with respect to the Box was received from the receiver's office.

16. The Box is currently at the accountant's offices.

17. Ms. Bowman has provided the contact information for the accountant to the receiver's lawyer and Ms. Bowman advises me that she has provided a copy of Justice Koehnen's order to the accountant. I have advised MTL's accountant that it may be contacted by the receiver in order for it to attend at the accountant's offices and take whatever copies of MTL's financial records, electronic or paper, that it deems necessary. Attached hereto and marked as **Exhibit 'C'** is a true copy of correspondence from Ms. Bowman to the receiver's lawyer, Natalie of June 3, 2021.

18. The receiver also wants to be able to examine me and essentially anyone else connected to MTL. I have no objection to being examined if the receiver believes that I can help but I think that MTL's accountant will be a better person to answer the receiver's questions about MTL's finances.

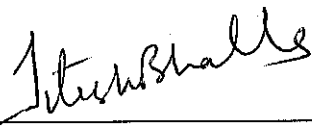
COSTS

19. I would ask that any and all costs including professional fees including counsel and venue fees be paid by the receiver.

20. I do not know what else I or MTL can provide to the receiver to help with its investigation.

21. I make this affidavit in response to the receiver's motion returnable June 4, 2021, for disclosure and other relief and for no other or improper purpose.

Affirmed before me at the City)
of Mississauga, on this 3rd)
day of June, 2021)



A Commissioner, etc.)



BALDEV DHINDSA

SWINDERPAL SINGH RANDHAWA
Applicant

-and-

RANA RANDHAWA ET AL.
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

RESPONDING AFFIDAVIT OF BALDEV DHINDSA
for the non-party,
Motion Transport Ltd.

Bridge Law Professional Corporation
Lawyers
13 – 7015 Tranmere Drive
Mississauga, ON L5S 1T7

Christina Bowman (LSUC# 50694U)

T. 905-673-7222

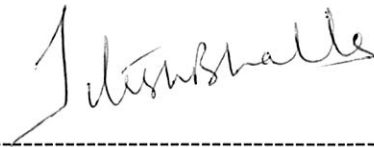
F. 1-877-719-1629

E. cbowman@bridgelawyers.ca

Lawyers for the Respondent,
Motion Transport Ltd.

TAB A

This is exhibit 'A' referred to in the
affidavit of Baldev Dhindsa affirmed before
me this 3rd day of June, 2021

A handwritten signature in black ink, appearing to read "Jitesh Bhalla", written in a cursive style.

Jitesh Bhalla

Commissioner for taking affidavits

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

**RESPONDING MOTION RECORD OF THE NON-PARTY,
MOTION TRANSPORT LTD.**

Returnable March 12, 2021

January 18, 2021

Bridge Law Professional Corporation
Lawyers
13 -7015 Tranmere Drive
Mississauga, ON L5S 1T7

Christina Bowman
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Lawyers for the Non-Party,
Motion Transport Ltd.

INDEX

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

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TAB 1

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

AFFIDAVIT OF BALDEV DHINDSA

Affirmed January 18, 2021

I, Baldev Dhindsa, of the City of Brampton, in the Regional Municipality of Peel,

SOLEMNLY AFFIRM:

1. I am the principal of Motion Transport Ltd. ("**MTL**"), and as such have personal knowledge of the matters to which I herein depose. Where my affidavit is based on information and belief, I have identified the source thereof and verily believe it to be true.
2. I make this affidavit further to my affidavit affirmed July 9, 2020 in response to the applicant's motion and attached hereto as **Exhibit 'A'** as well as my affidavit sworn July 31, 2020 and attached hereto as **Exhibit 'B'**.

THE ARBITRATION

3. The applicant's motion seeks to obtain an order for an inspector to examine all of MTL's books and records. He relies on affidavits that were filed in an arbitration between himself and his brother, Rana Randhawa.
4. Neither I nor MTL are parties to that arbitration. While I did give some evidence in that arbitration (I swore an affidavit and was cross-examined), I did not participate in any of the other proceedings. My lawyers could not ask questions of any of the witnesses or make any arguments to the Arbitrator.
5. I have reviewed the two Awards of the Arbitrator. The allegations that the Applicant has made in support of those Awards are absolutely false. The suggestion that Rana or his companies have diverted business to MTL for his benefit (or for any reason) is false. Neither Rana nor anyone connected to him have any interest in MTL. Until September 2020, his son Subeet did work for MTL, but he no longer works for us and has no role with the company.

MTL'S FINANCIAL RECORDS

6. The applicant's motion seeks to obtain an order for an inspector to examine all of MTL's books and records. Attached hereto and marked respectively as **Exhibits 'C'** through **'Q'** are MTL's financial records and accompanying source documents from the commencement of business operations May 2019 to April 2020 as follows:

E#	Document Name
C	Transaction Report January 2018 to April 2020 (2 pages)
D	Balance Sheet (1 page)
E	Sales Report (7 pages)

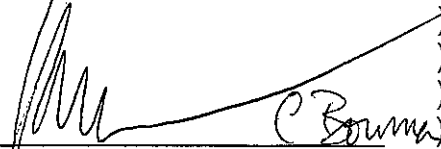
F	Profit and Loss Statement (1 page)
G	Equipment summary supporting documents (18 pages)
H	Invoices
I	Fuel Report and supporting documents (17 pages)
J	Insurance summary and supporting documents (5 pages)
K	Rent summary and supporting documents (3 page)
L	Repairs and Maintenance and supporting document (14 pages)
M	Sub Contractors (1 page)
N	Dues and Subscriptions and supporting documents (13 pages)
O	Business Taxes and supporting documents (3 pages)
P	Accounts Payable Aging Summary (1 page)
Q	Accounts Receivable Agging Summary (1 page)

7. After being served with the Applicant's material for this motion, I asked MTL's bookkeeper and accountants to organize the financial records. That took some time and they were only able to provide them to my lawyers beginning in late December.
8. As can be seen from the attached Profit and Loss statement, MTL only made approximately \$10,000 in its first year of operations.
9. One of the Applicant's allegations is that MTL has solicited the applicant's clients. Attached hereto and marked as **Exhibit 'R'** is a spread sheet listing MTL's clients, as listed in the above Sales Report but summarizing the revenues generated by each client of MTL.
10. I do not know whether any of MTL's clients are also clients of ASR> That would not be unusual given the nature of the trucking industry. MTL gets most of its loads from what are known as load brokers, as do many trucking companies in

the industry. Load brokers facilitate shippers finding trucking companies to drive their loads. Trucking companies also use load brokers in other ways. For instance, when a trucking company cannot handle all of its loads with its own drivers, it may solicit other trucking companies, sometimes through a load broker, to take those loads.

11. At paragraph 45 of the applicant's affidavit sworn August 10, 2020, the Applicant alleges that a truck and a trailer were transferred directly from ASR to Motion. Contrary to that allegation, I purchased these assets directly at an auction on August 3, 2018. The invoices for both pieces of equipment, from Iron Planet Canada Ltd., are attached above at Exhibit 'G', page numbers 43 and 44.
12. Given the information and supporting documentation I have provided in both this affidavit and my earlier affidavits, I do not understand on what basis the Applicant seeks an order for an inspector against MTL. MTL is a small company with a very small payroll. It took my bookkeeping staff and accountants many hours over the course of many weeks to organize the documentation attached to this affidavit, at considerable expense to MTL. Based on what I understand an inspector would do, I expect it will take up even more of the company's limited resources to have to be subject to that.
13. I make this affidavit in response to the applicant's motion for an inspector's order against MTL and for no other or improper purpose.

Affirmed before me at the City)
Of Mississauga, on this 9th)
day of January 18, 2021)


A Commissioner, etc.


BALDEV DHINDSA

SWINDERPAL SINGH
RANDHAWA
Applicant

-and-

RANA RANDHAWA ET AL.
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

**SECOND RESPONDING AFFIDAVIT
OF BALDEV DHINDSA**

for the non-party,
Motion Transport Ltd.
January 18, 2021

Bridge Law Professional Corporation
Lawyers
13 – 7015 Tranmere Drive
Mississauga, ON L5S 1T7

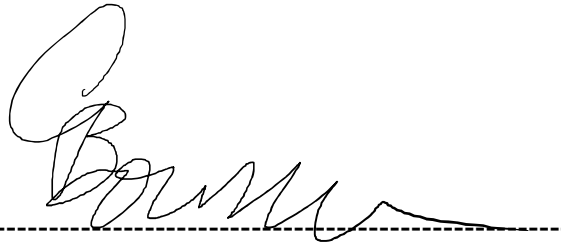
Christina Bowman (LSUC# 50694U)

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E. cbowman@bridgelawyers.ca

Lawyers for the Respondent,
Motion Transport Ltd.

TAB E

This is exhibit ' E' referred to in the
affidavit of Baldev Dhindsa affirmed before
me this 18th day of January, 2021

A handwritten signature in black ink, appearing to read "Bowman", is written over a horizontal dashed line.

Christina Bowman

Commissioner for taking affidavits

Motion Transport Ltd.

TRANSACTION REPORT

May 2019 - April 2020

DATE	TRANSACTION TYPE	#	NAME	ACCOUNT	AMOUNT	BALANCE
11/10/2019	Invoice	M0001	Ippolito Transportation Inc.	Services	\$1,075.00	1,075.00
13/10/2019	Invoice	M0002	Ippolito Transportation Inc.	Services	\$750.00	1,825.00
15/10/2019	Invoice	M0003	Ippolito Transportation Inc.	Services	\$1,000.00	2,825.00
16/10/2019	Invoice	M0004	Ippolito Transportation Inc.	Services	\$700.00	3,525.00
18/10/2019	Invoice	M0005	Ippolito Transportation Inc.	Services	\$1,000.00	4,525.00
19/10/2019	Invoice	M0007	Ippolito Transportation Inc.	Services	\$1,000.00	5,525.00
19/10/2019	Invoice	M0006	Ippolito Transportation Inc.	Services	\$750.00	6,275.00
01/11/2019	Invoice	M0009	Ippolito Transportation Inc.	Services	\$1,075.00	7,350.00
01/11/2019	Invoice	M0010	TRAFFIC TEAM INC.	Services	\$700.00	8,050.00
01/11/2019	Invoice	M0011	INTERLOAD TRUCK SERVICE LTD	Services	\$600.00	8,650.00
01/11/2019	Invoice	M0008	EG GRAY TRANSPORTATION LTD	Services	\$500.00	9,150.00
07/11/2019	Invoice	M0013	S.V.S Transportation Inc.	Services	\$5,000.00	14,150.00
07/11/2019	Invoice	M0012	Ippolito Transportation Inc.	Services	\$1,100.00	15,250.00
07/11/2019	Invoice	M0014	S.V.S Transportation Inc.	Services	\$1,000.00	16,250.00
07/11/2019	Invoice	M0016	EG GRAY TRANSPORTATION LTD	Services	\$900.00	17,150.00
13/11/2019	Invoice	M0019	Ippolito Transportation Inc.	Services	\$1,075.00	18,225.00
13/11/2019	Invoice	M0015	Ippolito Transportation Inc.	Services	\$1,017.70	19,242.70
13/11/2019	Invoice	M0018	EG GRAY TRANSPORTATION LTD	Services	\$900.00	20,142.70
13/11/2019	Invoice	M0017	FLS Transport	Services	\$850.00	20,992.70
13/11/2019	Invoice	M0020	Ippolito Transportation Inc.	Services	\$750.00	21,742.70
18/11/2019	Invoice	M0021	Ippolito Transportation Inc.	Services	\$1,075.00	22,817.70
18/11/2019	Invoice	M0024	Ippolito Transportation Inc.	Services	\$1,075.00	23,892.70
18/11/2019	Invoice	M0025	EG GRAY TRANSPORTATION LTD	Services	\$900.00	24,792.70
18/11/2019	Invoice	M0022	Ippolito Transportation Inc.	Services	\$700.00	25,492.70
18/11/2019	Invoice	M0023	S.V.S Transportation Inc.	Services	\$300.00	25,792.70
21/11/2019	Invoice	M0026	Ippolito Transportation Inc.	Services	\$1,000.00	26,792.70
21/11/2019	Invoice	M0028	Ippolito Transportation Inc.	Services	\$1,000.00	27,792.70
21/11/2019	Invoice	M0027	Ippolito Transportation Inc.	Services	\$900.00	28,692.70
21/11/2019	Invoice	M0029	FLS Transport	Services	\$886.97	29,579.67
25/11/2019	Invoice	M0030	Ippolito Transportation Inc.	Services	\$1,075.00	30,654.67
25/11/2019	Invoice	M0031	VITESSE TRUCKING SERVICES INC,	Services	\$800.00	31,454.67
26/11/2019	Invoice	M0032	Ippolito Transportation Inc.	Services	\$1,000.00	32,454.67
26/11/2019	Invoice	M0033	Ippolito Transportation Inc.	Services	\$750.00	33,204.67
29/11/2019	Invoice	M0034	Ippolito Transportation Inc.	Services	\$1,000.00	34,204.67
29/11/2019	Invoice	M0035	BSD TRANSPORT	Services	\$725.00	34,929.67
29/11/2019	Invoice	M0036	S.V.S Transportation Inc.	Services	\$400.00	35,329.67
05/12/2019	Invoice	M0037	MK FREIGHT BROKERS INC.	Services	\$800.00	36,129.67
05/12/2019	Invoice	M0038	CHARGER LOGISTICS INC.	Services	\$750.00	36,879.67
05/12/2019	Invoice	M0039	CHARGER LOGISTICS INC.	Services	\$750.00	37,629.67
05/12/2019	Invoice	M0040	S.V.S Transportation Inc.	Services	\$400.00	38,029.67
07/12/2019	Invoice	M0043	Ippolito Transportation Inc.	Services	\$1,000.00	39,029.67
07/12/2019	Invoice	M0046	Ippolito Transportation Inc.	Services	\$1,000.00	40,029.67
07/12/2019	Invoice	M0047	Ippolito Transportation Inc.	Services	\$1,000.00	41,029.67
07/12/2019	Invoice	M0045	EG GRAY TRANSPORTATION LTD	Services	\$1,000.00	42,029.67
07/12/2019	Invoice	M0041	CHARGER LOGISTICS INC.	Services	\$750.00	42,779.67
07/12/2019	Invoice	M0044	AJIT TRANSPORT INC.	Services	\$750.00	43,529.67
07/12/2019	Invoice	M0048	CHARGER LOGISTICS INC.	Services	\$750.00	44,279.67
07/12/2019	Invoice	M0042	CHARGER LOGISTICS INC.	Services	\$750.00	45,029.67

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12/12/2019	Invoice	M0150	Day&Ross Inc.	Services	\$1,700.00	46,729.67
12/12/2019	Invoice	M0053	FLS Transport	Services	\$1,050.00	47,779.67
12/12/2019	Invoice	M0052	Ippolito Transportation Inc.	Services	\$1,000.00	48,779.67
12/12/2019	Invoice	M0050	CHARGER LOGISTICS INC.	Services	\$750.00	49,529.67
12/12/2019	Invoice	M0051	CHARGER LOGISTICS INC.	Services	\$750.00	50,279.67
12/12/2019	Invoice	M0054	CHARGER LOGISTICS INC.	Services	\$750.00	51,029.67
12/12/2019	Invoice	M0055	CHARGER LOGISTICS INC.	Services	\$750.00	51,779.67
12/12/2019	Invoice	M0049	Leaple Packaging	Services	\$450.00	52,229.67
13/12/2019	Invoice	M0083	Ippolito Transportation Inc.	Services	\$1,000.00	53,229.67
13/12/2019	Invoice	M0082	CHARGER LOGISTICS INC.	Services	\$750.00	53,979.67
13/12/2019	Invoice	M0084	Ippolito Transportation Inc.	Services	\$750.00	54,729.67
13/12/2019	Invoice	M0081	CHARGER LOGISTICS INC.	Services	\$735.00	55,464.67
14/12/2019	Invoice	M0058	Ippolito Transportation Inc.	Services	\$1,000.00	56,464.67
14/12/2019	Invoice	M0059	FLS Transport	Services	\$800.00	57,264.67
14/12/2019	Invoice	M0056	CHARGER LOGISTICS INC.	Services	\$750.00	58,014.67
14/12/2019	Invoice	M0057	CHARGER LOGISTICS INC.	Services	\$750.00	58,764.67
17/12/2019	Invoice	M0061	CHARGER LOGISTICS INC.	Services	\$800.00	59,564.67
17/12/2019	Invoice	M0063	CHARGER LOGISTICS INC.	Services	\$750.00	60,314.67
17/12/2019	Invoice	M0062	CHARGER LOGISTICS INC.	Services	\$750.00	61,064.67
17/12/2019	Invoice	M0060	CHARGER LOGISTICS INC.	Services	\$650.00	61,714.67
18/12/2019	Invoice	M0066	Ippolito Transportation Inc.	Services	\$1,000.00	62,714.67
18/12/2019	Invoice	M0067	ON TIME TRANSPORT	Services	\$800.00	63,514.67
18/12/2019	Invoice	M0064	CHARGER LOGISTICS INC.	Services	\$750.00	64,264.67
18/12/2019	Invoice	M0065	CHARGER LOGISTICS INC.	Services	\$750.00	65,014.67
19/12/2019	Invoice	M0069	Ippolito Transportation Inc.	Services	\$1,075.00	66,089.67
19/12/2019	Invoice	M0068	Leaple Packaging	Services	\$450.00	66,539.67
23/12/2019	Invoice	M0070	Ippolito Transportation Inc.	Services	\$900.00	67,439.67
23/12/2019	Invoice	M0071	CHARGER LOGISTICS INC.	Services	\$750.00	68,189.67
23/12/2019	Invoice	M0072	CHARGER LOGISTICS INC.	Services	\$750.00	68,939.67
27/12/2019	Invoice	M0080	MAG International Services and Transports	Services	\$1,400.00	70,339.67
27/12/2019	Invoice	M0078	Ippolito Transportation Inc.	Services	\$1,000.00	71,339.67
27/12/2019	Invoice	M0073	Ippolito Transportation Inc.	Services	\$1,000.00	72,339.67
27/12/2019	Invoice	M0076	Ippolito Transportation Inc.	Services	\$1,000.00	73,339.67
27/12/2019	Invoice	M0074	CHARGER LOGISTICS INC.	Services	\$750.00	74,089.67
27/12/2019	Invoice	M0075	CHARGER LOGISTICS INC.	Services	\$750.00	74,839.67
27/12/2019	Invoice	M0077	Ippolito Transportation Inc.	Services	\$750.00	75,589.67
27/12/2019	Invoice	M0079	Ippolito Transportation Inc.	Services	\$750.00	76,339.67
02/01/2020	Invoice	M0085	Ippolito Transportation Inc.	Services	\$1,075.00	77,414.67
02/01/2020	Invoice	M0087	Ippolito Transportation Inc.	Services	\$1,000.00	78,414.67
02/01/2020	Invoice	M0086	Ippolito Transportation Inc.	Services	\$750.00	79,164.67
02/01/2020	Invoice	M0088	S.V.S Transportation Inc.	Services	\$400.00	79,564.67
06/01/2020	Invoice	M0089	Ippolito Transportation Inc.	Services	\$1,075.00	80,639.67
06/01/2020	Invoice	M0090	Ippolito Transportation Inc.	Services	\$1,000.00	81,639.67
07/01/2020	Invoice	M0091	CHARGER LOGISTICS INC.	Services	\$750.00	82,389.67
07/01/2020	Invoice	M0092	CHARGER LOGISTICS INC.	Services	\$750.00	83,139.67
08/01/2020	Invoice	M0093	MAG International Services and Transports	Services	\$1,400.00	84,539.67
08/01/2020	Invoice	M0094	Forbes-Hewlett Logistics Inc.	Services	\$750.00	85,289.67
09/01/2020	Invoice	M0095	FLS Transport	Services	\$926.25	86,215.92

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10/01/2020	Invoice	M0096	Titanium Logistics Inc.	Services	\$2,675.00	88,890.92
10/01/2020	Invoice	M0097	Connors Transfer Ltd.	Services	\$1,100.00	89,990.92
10/01/2020	Invoice	M0098	Ippolito Transportation Inc.	Services	\$1,000.00	90,990.92
13/01/2020	Invoice	M0100	ON TIME TRANSPORT	Services	\$750.00	91,740.92
13/01/2020	Invoice	M0099	Kooi Trucking Inc.	Services	\$650.00	92,390.92
15/01/2020	Invoice	M0101	MAG International Services and Transports	Services	\$1,400.00	93,790.92
15/01/2020	Invoice	M0103	Ippolito Transportation Inc.	Services	\$1,075.00	94,865.92
15/01/2020	Invoice	M0102	EG GRAY TRANSPORTATION LTD	Services	\$1,050.00	95,915.92
15/01/2020	Invoice	M0104	Ippolito Transportation Inc.	Services	\$1,000.00	96,915.92
16/01/2020	Invoice	M0105	Ippolito Transportation Inc.	Services	\$1,000.00	97,915.92
16/01/2020	Invoice	M0106	Ippolito Transportation Inc.	Services	\$1,000.00	98,915.92
16/01/2020	Invoice	M0107	Ippolito Transportation Inc.	Services	\$750.00	99,665.92
20/01/2020	Invoice	M0116	MAG International Services and Transports	Services	\$1,400.00	101,065.92
21/01/2020	Invoice	M0115	Titanium Logistics Inc.	Services	\$2,450.00	103,515.92
21/01/2020	Invoice	M0114	Connors Transfer Ltd.	Services	\$1,250.00	104,765.92
21/01/2020	Invoice	M0112	Ippolito Transportation Inc.	Services	\$1,075.00	105,840.92
21/01/2020	Invoice	M0111	Ippolito Transportation Inc.	Services	\$1,000.00	106,840.92
21/01/2020	Invoice	M0109	FLS Transport	Services	\$985.64	107,826.56
21/01/2020	Invoice	M0108	EG GRAY TRANSPORTATION LTD	Services	\$900.00	108,726.56
21/01/2020	Invoice	M0110	FLS Transport	Services	\$850.00	109,576.56
21/01/2020	Invoice	M0113	S.V.S Transportation Inc.	Services	\$750.00	110,326.56
24/01/2020	Invoice	M0119	Ippolito Transportation Inc.	Services	\$970.00	111,296.56
24/01/2020	Invoice	M0118	Ippolito Transportation Inc.	Services	\$727.50	112,024.06
24/01/2020	Invoice	M0117	Ippolito Transportation Inc.	Services	\$0.00	112,024.06
27/01/2020	Invoice	M0120	Titanium Logistics Inc.	Services	\$2,500.00	114,524.06
27/01/2020	Invoice	M0121	Titanium Logistics Inc.	Services	\$2,450.00	116,974.06
27/01/2020	Invoice	M0124	Wellington Motor Freight	Services	\$1,600.00	118,574.06
27/01/2020	Invoice	M0123	SpeedX Transport	Services	\$1,400.00	119,974.06
27/01/2020	Invoice	M0122	Ippolito Transportation Inc.	Services	\$970.00	120,944.06
28/01/2020	Invoice	M0125	FLS Transport	Services	\$1,000.00	121,944.06
31/01/2020	Invoice	M0127	Ippolito Transportation Inc.	Services	\$1,042.75	122,986.81
31/01/2020	Invoice	M0126	Ippolito Transportation Inc.	Services	\$970.00	123,956.81
31/01/2020	Invoice	M0128	ON TIME TRANSPORT	Services	\$750.00	124,706.81
31/01/2020	Invoice	M0129	EG GRAY TRANSPORTATION LTD	Services	\$550.00	125,256.81
03/02/2020	Invoice	M0131	ON TIME TRANSPORT	Services	\$1,000.00	126,256.81
03/02/2020	Invoice	M0133	Ippolito Transportation Inc.	Services	\$970.00	127,226.81
03/02/2020	Invoice	M0132	S.V.S Transportation Inc.	Services	\$925.00	128,151.81
03/02/2020	Invoice	M0130	Scotlynn Commodities	Services	\$800.00	128,951.81
05/02/2020	Invoice	M0137	ON TIME TRANSPORT	Services	\$1,000.00	129,951.81
05/02/2020	Invoice	M0136	Ippolito Transportation Inc.	Services	\$970.00	130,921.81
05/02/2020	Invoice	M0138	Ippolito Transportation Inc.	Services	\$970.00	131,891.81
05/02/2020	Invoice	M0135	ON TIME TRANSPORT	Services	\$900.00	132,791.81
05/02/2020	Invoice	M0139	FLS Transport	Services	\$800.00	133,591.81
05/02/2020	Invoice	M0134	Bell City Transport Systems 2012 INC.	Services	\$800.00	134,391.81
06/02/2020	Invoice	M0140	Bell City Transport Systems 2012 INC.	Services	\$1,100.00	135,491.81
06/02/2020	Invoice	M0141	Bell City Transport Systems 2012 INC.	Services	\$800.00	136,291.81
07/02/2020	Invoice	M0143	Ippolito Transportation Inc.	Services	\$1,042.75	137,334.56
07/02/2020	Invoice	M0144	EG GRAY TRANSPORTATION LTD	Services	\$1,000.00	138,334.56

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07/02/2020	Invoice	M0142	FLS Transport	Services	\$925.00	139,259.56
10/02/2020	Invoice	M0148	Ippolito Transportation Inc.	Services	\$970.00	140,229.56
10/02/2020	Invoice	M0146	Scotlynn Commodities	Services	\$800.00	141,029.56
10/02/2020	Invoice	M0147	FLS Transport	Services	\$800.00	141,829.56
10/02/2020	Invoice	M0145	Scotlynn Commodities	Services	\$750.00	142,579.56
12/02/2020	Invoice	M0149	Titanium Logistics Inc.	Services	\$2,500.00	145,079.56
13/02/2020	Invoice	M0152	EG GRAY TRANSPORTATION LTD	Services	\$1,000.00	146,079.56
13/02/2020	Invoice	M0151	ON TIME TRANSPORT	Services	\$900.00	146,979.56
18/02/2020	Invoice	M0156	Titanium Logistics Inc.	Services	\$1,200.00	148,179.56
18/02/2020	Invoice	M0160	Bell City Transport Systems 2012 INC.	Services	\$1,100.00	149,279.56
18/02/2020	Invoice	M0153	Ippolito Transportation Inc.	Services	\$970.00	150,249.56
18/02/2020	Invoice	M0154	Ippolito Transportation Inc.	Services	\$970.00	151,219.56
18/02/2020	Invoice	M0162	Ippolito Transportation Inc.	Services	\$970.00	152,189.56
18/02/2020	Invoice	M0166	Ippolito Transportation Inc.	Services	\$970.00	153,159.56
18/02/2020	Invoice	M0164	JBT Transport	Services	\$850.00	154,009.56
18/02/2020	Invoice	M0155	FLS Transport	Services	\$800.00	154,809.56
18/02/2020	Invoice	M0163	ON TIME TRANSPORT	Services	\$800.00	155,609.56
18/02/2020	Invoice	M0167	FLS Transport	Services	\$800.00	156,409.56
18/02/2020	Invoice	M0157	Scotlynn Commodities	Services	\$800.00	157,209.56
18/02/2020	Invoice	M0161	FLS Transport	Services	\$800.00	158,009.56
18/02/2020	Invoice	M0158	ON TIME TRANSPORT	Services	\$750.00	158,759.56
18/02/2020	Invoice	M0159	ON TIME TRANSPORT	Services	\$750.00	159,509.56
18/02/2020	Invoice	M0165	D4 Logistics	Services	\$750.00	160,259.56
21/02/2020	Invoice	M0171	Titanium Logistics Inc.	Services	\$2,800.00	163,059.56
21/02/2020	Invoice	M0168	Patriot Freight Services	Services	\$2,200.00	165,259.56
21/02/2020	Invoice	M0175	Day&Ross Inc.	Services	\$1,400.00	166,659.56
21/02/2020	Invoice	M0169	Connors Transfer Ltd.	Services	\$1,175.00	167,834.56
21/02/2020	Invoice	M0172	Ippolito Transportation Inc.	Services	\$970.00	168,804.56
21/02/2020	Invoice	M0173	Ippolito Transportation Inc.	Services	\$970.00	169,774.56
21/02/2020	Invoice	M0174	Ippolito Transportation Inc.	Services	\$727.50	170,502.06
21/02/2020	Invoice	M0170	Kingworld Truckline	Services	\$600.00	171,102.06
24/02/2020	Invoice	M0179	Wellington Motor Freight	Services	\$2,500.00	173,602.06
24/02/2020	Invoice	M0176	Sunbury Transport Limited	Services	\$1,600.00	175,202.06
24/02/2020	Invoice	M0178	ON TIME TRANSPORT	Services	\$800.00	176,002.06
24/02/2020	Invoice	M0177	TRAFFIC TEAM INC.	Services	\$750.00	176,752.06
25/02/2020	Invoice	M0199	Day&Ross Inc.	Services	\$2,300.00	179,052.06
25/02/2020	Invoice	M0201	Ippolito Transportation Inc.	Services	\$1,115.50	180,167.56
25/02/2020	Invoice	M0200	Ippolito Transportation Inc.	Services	\$1,042.75	181,210.31
25/02/2020	Invoice	M0203	ON TIME TRANSPORT	Services	\$850.00	182,060.31
25/02/2020	Invoice	M0180	FLS Transport	Services	\$800.00	182,860.31
25/02/2020	Invoice	M0198	S.V.S Transportation Inc.	Services	\$600.00	183,460.31
26/02/2020	Invoice	M0181	Titanium Logistics Inc.	Services	\$2,500.00	185,960.31
26/02/2020	Invoice	M0182	Falco Logistics	Services	\$1,700.00	187,660.31
26/02/2020	Invoice	M0185	EG GRAY TRANSPORTATION LTD	Services	\$1,300.00	188,960.31
26/02/2020	Invoice	M0184	Ippolito Transportation Inc.	Services	\$970.00	189,930.31
26/02/2020	Invoice	M0183	Ippolito Transportation Inc.	Services	\$970.00	190,900.31
27/02/2020	Invoice	M0186	Rangi Brothers Logistics Inc.	Services	\$2,200.00	193,100.31
27/02/2020	Invoice	M0187	EG GRAY TRANSPORTATION LTD	Services	\$650.00	193,750.31

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28/02/2020	Invoice	M0190	ON TIME TRANSPORT	Services	\$1,625.00	195,375.31
28/02/2020	Invoice	M0191	Sunbury Transport Limited	Services	\$1,600.00	196,975.31
28/02/2020	Invoice	M0188	Ippolito Transportation Inc.	Services	\$1,042.75	198,018.06
28/02/2020	Invoice	M0189	Ippolito Transportation Inc.	Services	\$727.50	198,745.56
02/03/2020	Invoice	M0195	Cargo County Group	Services	\$2,450.00	201,195.56
02/03/2020	Invoice	M0196	Sunbury Transport Limited	Services	\$1,600.00	202,795.56
02/03/2020	Invoice	M0197	Ippolito Transportation Inc.	Services	\$970.00	203,765.56
02/03/2020	Invoice	M0192	ON TIME TRANSPORT	Services	\$800.00	204,565.56
02/03/2020	Invoice	M0193	FLS Transport	Services	\$800.00	205,365.56
02/03/2020	Invoice	M0194	FLS Transport	Services	\$800.00	206,165.56
04/03/2020	Invoice	M0202	Sunbury Transport Limited	Services	\$1,600.00	207,765.56
06/03/2020	Invoice	M0204	Ippolito Transportation Inc.	Services	\$970.00	208,735.56
09/03/2020	Invoice	M0205	Grand Carriers	Services	\$4,200.00	212,935.56
09/03/2020	Invoice	M0206	Grand Carriers	Services	\$4,200.00	217,135.56
09/03/2020	Invoice	M0207	Coastal Pacific Xpress Inc.	Services	\$2,000.00	219,135.56
09/03/2020	Invoice	M0211	Ippolito Transportation Inc.	Services	\$1,721.75	220,857.31
09/03/2020	Invoice	M0208	Ippolito Transportation Inc.	Services	\$970.00	221,827.31
09/03/2020	Invoice	M0210	FLS Transport	Services	\$800.00	222,627.31
09/03/2020	Invoice	M0209	FLS Transport	Services	\$800.00	223,427.31
13/03/2020	Invoice	M0215	Grand Carriers	Services	\$4,200.00	227,627.31
13/03/2020	Invoice	M0213	Titanium Logistics Inc.	Services	\$2,800.00	230,427.31
13/03/2020	Invoice	M0212	Titanium Logistics Inc.	Services	\$2,400.00	232,827.31
13/03/2020	Invoice	M0214	Maectrans Logistics Inc.	Services	\$1,550.00	234,377.31
13/03/2020	Invoice	M0217	Ippolito Transportation Inc.	Services	\$970.00	235,347.31
13/03/2020	Invoice	M0218	Ippolito Transportation Inc.	Services	\$970.00	236,317.31
13/03/2020	Invoice	M0216	ON TIME TRANSPORT	Services	\$900.00	237,217.31
16/03/2020	Invoice	M0221	Grand Carriers	Services	\$4,200.00	241,417.31
16/03/2020	Invoice	M0224	Ippolito Transportation Inc.	Services	\$1,721.75	243,139.06
16/03/2020	Invoice	M0222	Bell City Transport Systems 2012 INC.	Services	\$1,100.00	244,239.06
16/03/2020	Invoice	M0220	Ippolito Transportation Inc.	Services	\$970.00	245,209.06
16/03/2020	Invoice	M0223	Scotlynn Commodities	Services	\$800.00	246,009.06
16/03/2020	Invoice	M0219	ON TIME TRANSPORT	Services	\$750.00	246,759.06
17/03/2020	Invoice	M0225	Ippolito Transportation Inc.	Services	\$970.00	247,729.06
17/03/2020	Invoice	M0226	FLS Transport	Services	\$800.00	248,529.06
20/03/2020	Invoice	M0227	Grand Carriers	Services	\$4,200.00	252,729.06
20/03/2020	Invoice	M0228	Grand Carriers	Services	\$4,200.00	256,929.06
20/03/2020	Invoice	M0229	Ippolito Transportation Inc.	Services	\$970.00	257,899.06
20/03/2020	Invoice	M0230	Ippolito Transportation Inc.	Services	\$970.00	258,869.06
20/03/2020	Invoice	M0231	Ippolito Transportation Inc.	Services	\$727.50	259,596.56
23/03/2020	Invoice	M0232	FLS Transport	Services	\$1,287.50	260,884.06
23/03/2020	Invoice	M0234	Traffic Tech Inc.	Services	\$1,000.00	261,884.06
23/03/2020	Invoice	M0235	Ippolito Transportation Inc.	Services	\$970.00	262,854.06
23/03/2020	Invoice	M0233	Ippolito Transportation Inc.	Services	\$970.00	263,824.06
26/03/2020	Invoice	M0236	Ippolito Transportation Inc.	Services	\$970.00	264,794.06
26/03/2020	Invoice	M0237	Ippolito Transportation Inc.	Services	\$970.00	265,764.06
26/03/2020	Invoice	M0238	ON TIME TRANSPORT	Services	\$750.00	266,514.06
26/03/2020	Invoice	M0239	ON TIME TRANSPORT	Services	\$750.00	267,264.06
27/03/2020	Invoice	M0240	Grand Carriers	Services	\$4,200.00	271,464.06

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27/03/2020	Invoice	M0242	Titanium Logistics Inc.	Services	\$2,800.00	274,264.06
27/03/2020	Invoice	M0244	Ippolito Transportation Inc.	Services	\$1,697.50	275,961.56
27/03/2020	Invoice	M0241	Titanium Logistics Inc.	Services	\$1,200.00	277,161.56
27/03/2020	Invoice	M0243	Connors Transfer Ltd.	Services	\$1,100.00	278,261.56
30/03/2020	Invoice	M0246	Ippolito Transportation Inc.	Services	\$1,042.75	279,304.31
30/03/2020	Invoice	M0245	Georgian Freight Lines Inc.	Services	\$750.00	280,054.31
01/04/2020	Invoice	M0268	Grand Carriers	Services	\$2,400.00	282,454.31
01/04/2020	Invoice	M0272	Coastal Pacific Xpress Inc.	Services	\$2,000.00	284,454.31
01/04/2020	Invoice	M0274	Bell City Transport Systems 2012 INC.	Services	\$1,600.00	286,054.31
01/04/2020	Invoice	M0275	Ippolito Transportation Inc.	Services	\$970.00	287,024.31
01/04/2020	Invoice	M0270	Titanium Logistics Inc.	Services	\$850.00	287,874.31
01/04/2020	Invoice	M0271	Titanium Logistics Inc.	Services	\$850.00	288,724.31
01/04/2020	Invoice	M0273	FLS Transport	Services	\$800.00	289,524.31
01/04/2020	Invoice	M0269	Velocity Transport	Services	\$700.00	290,224.31
02/04/2020	Invoice	M0249	Titanium Logistics Inc.	Services	\$2,800.00	293,024.31
02/04/2020	Invoice	M0248	Grand Carriers	Services	\$1,600.00	294,624.31
02/04/2020	Invoice	M0250	Ippolito Transportation Inc.	Services	\$1,115.50	295,739.81
02/04/2020	Invoice	M0247	FLS Transport	Services	\$1,000.00	296,739.81
02/04/2020	Invoice	M0252	Ippolito Transportation Inc.	Services	\$970.00	297,709.81
02/04/2020	Invoice	M0251	Ippolito Transportation Inc.	Services	\$800.25	298,510.06
03/04/2020	Invoice	M0258	FLS Transport	Services	\$1,375.00	299,885.06
03/04/2020	Invoice	M0257	FLS Transport	Services	\$1,275.00	301,160.06
03/04/2020	Invoice	M0254	Ippolito Transportation Inc.	Services	\$1,042.75	302,202.81
03/04/2020	Invoice	M0253	Ippolito Transportation Inc.	Services	\$970.00	303,172.81
03/04/2020	Invoice	M0256	ON TIME TRANSPORT	Services	\$750.00	303,922.81
03/04/2020	Invoice	M0255	ON TIME TRANSPORT	Services	\$750.00	304,672.81
06/04/2020	Invoice	M0264	Grand Carriers	Services	\$2,500.00	307,172.81
06/04/2020	Invoice	M0263	Grand Carriers	Services	\$2,400.00	309,572.81
06/04/2020	Invoice	M0260	Coastal Pacific Xpress Inc.	Services	\$2,000.00	311,572.81
06/04/2020	Invoice	M0262	Atlantic Commodities Inc.	Services	\$1,800.00	313,372.81
06/04/2020	Invoice	M0267	Ippolito Transportation Inc.	Services	\$1,770.25	315,143.06
06/04/2020	Invoice	M0261	Coastal Pacific Xpress Inc.	Services	\$1,500.00	316,643.06
06/04/2020	Invoice	M0266	Ippolito Transportation Inc.	Services	\$970.00	317,613.06
06/04/2020	Invoice	M0265	J&R Transport	Services	\$850.00	318,463.06
06/04/2020	Invoice	M0259	Velocity Transport	Services	\$700.00	319,163.06
14/04/2020	Invoice	M0276	Ippolito Transportation Inc.	Services	\$970.00	320,133.06
14/04/2020	Invoice	M0277	Ippolito Transportation Inc.	Services	\$727.50	320,860.56
19/04/2020	Invoice	M0291	Ippolito Transportation Inc.	Services	\$1,042.25	321,902.81
19/04/2020	Invoice	M0280	FLS Transport	Services	\$1,037.50	322,940.31
19/04/2020	Invoice	M0286	Ippolito Transportation Inc.	Services	\$970.00	323,910.31
19/04/2020	Invoice	M0289	Ippolito Transportation Inc.	Services	\$970.00	324,880.31
19/04/2020	Invoice	M0288	Ippolito Transportation Inc.	Services	\$970.00	325,850.31
19/04/2020	Invoice	M0290	Ippolito Transportation Inc.	Services	\$970.00	326,820.31
19/04/2020	Invoice	M0285	Ippolito Transportation Inc.	Services	\$970.00	327,790.31
19/04/2020	Invoice	M0287	Ippolito Transportation Inc.	Services	\$970.00	328,760.31
19/04/2020	Invoice	M0283	ON TIME TRANSPORT	Services	\$850.00	329,610.31
19/04/2020	Invoice	M0282	ON TIME TRANSPORT	Services	\$800.00	330,410.31
19/04/2020	Invoice	M0281	ON TIME TRANSPORT	Services	\$750.00	331,160.31

Motion Transport Ltd.

TRANSACTION REPORT

May 2019 - April 2020

DATE	TRANSACTION TYPE	#	NAME	ACCOUNT	AMOUNT	BALANCE
19/04/2020	Invoice	M0284	ON TIME TRANSPORT	Services	\$750.00	331,910.31
19/04/2020	Invoice	M0279	Pro Way Freight Systems Inc.	Services	\$700.00	332,610.31
19/04/2020	Invoice	M0278	Road Train Express Inc.	Services	\$600.00	333,210.31
20/04/2020	Invoice	M0301	Grand Carriers	Services	\$2,850.00	336,060.31
20/04/2020	Invoice	M0300	Grand Carriers	Services	\$1,450.00	337,510.31
20/04/2020	Invoice	M0302	Grand Carriers	Services	\$1,300.00	338,810.31
21/04/2020	Invoice	M0292	Grand Carriers	Services	\$600.00	339,410.31
27/04/2020	Invoice	M0295	Grand Carriers	Services	\$2,770.41	342,180.72
27/04/2020	Invoice	M0296	Grand Carriers	Services	\$2,350.00	344,530.72
27/04/2020	Invoice	M0298	Grand Carriers	Services	\$1,600.00	346,130.72
27/04/2020	Invoice	M0297	Grand Carriers	Services	\$1,150.00	347,280.72
27/04/2020	Invoice	M0293	ON TIME TRANSPORT	Services	\$800.00	348,080.72
27/04/2020	Invoice	M0294	ON TIME TRANSPORT	Services	\$750.00	348,830.72
30/04/2020	Invoice	M0299	Grand Carriers	Services	\$500.00	349,330.72
TOTAL					\$349,330.72	

SWINDERPAL SINGH RANDHAWA
Applicant

-and-

RANA RANDHAWA ET AL.
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT **TORONTO**

RESPONDING AFFIDAVIT
of the Non- party,
Motion Transport Ltd.

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Lawyers
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Lawyers for the Non- party,
Motion Transport Ltd.

APPENDIX “H”

[ATTACHED]

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

THE HONOURABLE MISTER)
)
JUSTICE KOEHNEN)

FRIDAY, THE 4th
DAY OF JUNE, 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
(re: Motion Transport Ltd.)**

THIS MOTION made by KSV Restructuring Inc. ("**KSV**"), in its capacity as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Respondent corporate entities (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 Receiver's Supplemental Motion Record dated May 31, 2021 (the "**Receiver's Supplemental Motion Record**"), including the Supplement to the First Report of the Receiver dated May 31, 2021, and the Affidavit of Service of Benjamin

Goodis sworn June 1, 2021, and on hearing the submissions of counsel for KSV and counsel for Motion Transport Ltd. ("**Motion**"):

SERVICE

1. THIS COURT ORDERS that the time for service of the Receiver's Supplemental Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

PRODUCTION AND DISCLOSURE

2. THIS COURT ORDERS that by no later than 9:00 a.m. (Toronto time) on June 7, 2021, Motion disclose to the Receiver the location of any and all electronic records, including any servers, computers or other devices where electronic records may be stored (the "**Electronic Records**") and assist the Receiver to access, locate, decode and decrypt any and all Electronic Records and any information contained therein.

3. THIS COURT ORDERS that by no later than 9:00 a.m. (Toronto time) on June 7, 2021, Motion deliver all hard copy documents to the Receiver.

EXAMINATIONS UNDER OATH

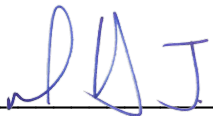
4. THIS COURT ORDERS that Baldev Dhindsa, and any current or former directors, officers, employees, and contractors of Motion, and any other persons that the Receiver reasonably believes may have knowledge of Motion's affairs, attend at an examination under oath before an Official Examiner in Toronto, on a date to be agreed upon or selected by the Receiver, with a minimum of 10 days notice, notice to include a copy of this Order, and answer questions propounded to them by counsel for the Receiver and provide testimony with respect to the matters set out in this Order and the Order (Appointing Receiver) dated May 26, 2021, as amended and restated from time to time (the "**Receivership Order**"), including any matters that the Receiver reasonably believes will assist the Receiver in carrying out the Investigation Mandate described within the Receivership Order.

GENERAL

5. 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.

6. 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.

7. 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.

_____ 

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
(RE: MOTION TRANSPORT LTD.)**

CASSELS BROCK & BLACKWELL LLP

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Lawyers for KSV Restructuring Inc. in its capacity as
Receiver

LEGAL*53278585.1

APPENDIX “I”
[ATTACHED]



**Third 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.**

August 3, 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

THIRD REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

AUGUST 3, 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), 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. 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 Receiver of RGC. The Receivership Order was amended on June 4, 2021 (the "Amended Receivership Order"). A copy of the Amended Receivership Order is attached as Appendix "A".

3. 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.
4. 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 the Receivership Order authorizing KSV, as Receiver, to carry out a sale mandate and an investigation. A copy of the Decision is attached as Appendix “B”. A copy of the decision on costs for the motion resulting in the Receivership Order is attached as Appendix “C”.
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 the arbitrator and by the Receiver, to ensure that the trucking business is being sold in a manner that maximizes value (the “Investigation Mandate”).
6. On June 4, 2021, the Court ordered (the “Motion Order”) that “persons that the Receiver reasonably believes may have knowledge of Motion’s affairs, attend at an examination under oath before an Official Examiner in Toronto [...] and answer questions propounded to them by counsel for the Receiver and provide testimony with respect to the matters set out in this Order and the Order (Appointing Receiver) dated May 26, 2021, as amended and restated from time to time (the “Receivership Order”), including any matters that the Receiver reasonably believes will assist the Receiver in carrying out the Investigation Mandate described within the Receivership Order.” [emphasis added]. Rana’s counsel was present at the hearing where the order was granted and took no position on the Motion Order. A copy of the Motion Order is attached hereto as Appendix “D”.

1.1 Purpose

1. The purposes of this Report are to:
 - a) provide an update on the Receiver’s investigation, including its efforts to interview Rana pursuant to the Motion Order and in connection with the Investigation Mandate;
 - b) request advice and direction from this Court with respect to the Motion Order and the Investigation Mandate in light of Rana’s refusal to be examined under oath; and
 - c) recommend the Court issue an order that Rana pay personally and forthwith the Receiver’s costs of preparing this Report, costs thrown away due to Rana’s refusal to be examined under oath, and costs of the continuation of his examination.

2.0 Investigation Mandate

2.1 Nature of the investigation

1. The Receiver was appointed following a contentious dispute between Paul and Rana, beginning with Paul's commencement of an oppression action in 2018 (the "Application"). Notwithstanding their entry into two settlement agreements (the "October Minutes" and the "Unequal Benefits Settlement"), the dispute remains ongoing and the Application has not been fully and finally resolved.
2. The Decision was made in the context of Paul's motion to enforce an arbitration award appointing an inspector under the Ontario *Business Corporations Act* ("OBCA"). More specifically, in June 2020, Paul delivered an *ex parte* motion record to the arbitrator appointed pursuant to the October Minutes (the "Arbitrator") seeking the appointment of an inspector under the OBCA. The Arbitrator granted an award dated July 3, 2020, which Paul subsequently sought to have recognized by this Court. On July 17, 2020, 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, setting out further reasons for the appointment of an inspector. A copy of the October Award is attached as Appendix "E". The October Award details the Arbitrator's concerns at length and, in certain cases, found evidence presented on behalf of Rana to be "problematic", including because "it evolved in significant ways, numerous times following delivery of other evidence".¹
4. The Decision confirms that the "Arbitrator made ample findings to justify the need for an investigation." In particular:
 - a) The Arbitrator found that "Rana 'perpetuated a lack of transparency' in the operation of the trucking business";² and
 - b) Rana's proposed receiver acknowledged that certain of the arbitrator's findings "could constitute red flags for potential fraud."³
5. The Decision, however, makes clear that notwithstanding the Arbitrator's findings, the appointment of an inspector (or an investigatory receiver) is appropriate because the Arbitrator's findings were not definitive. Instead, this Court determined only that there "were sufficient grounds to have concerns about wrongdoing to warrant investigation."⁴

¹ October Award, paragraph 139.

² Decision at paragraph 40.

³ Decision at paragraph 41.

⁴ Decision at paragraph 46.

6. 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.”⁵ 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. Although the Receiver has been judicious in the use of its resources, any delay will necessarily limit the Receiver’s ability to fulfill its mandate in an efficient and cost-effective manner.
7. Rana has denied all of these allegations and any affiliation with Motion Transport Ltd. (“Motion”), as set out in Rana’s various affidavits and cross examinations as part of these proceedings.

2.2 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) imaged RGC’s server and Motion’s email database;
 - b) as described in the Second Report, negotiated a protocol to permit Rana to review over 900,000 records which may constitute privileged data located on RGC’s servers;⁶
 - c) reviewed the Remaining Data (as defined in the Protocol) which consists of over 1 million records;
 - d) reviewed certain records of Motion and RGC, including banking, customer, Ministry of Transportation, and other records;
 - e) prepared for and conducted an examination of Mr. Baldev Dhindsa, a principal of Motion, under oath;⁷
 - f) prepared for an examination of Rana, to be conducted under oath, after specifically advising Rana’s counsel that the examination would take place under oath, and attended at that examination, at which time Rana refused to be sworn;
 - g) discussed the matters being investigated with certain former employees of ASR and other industry contacts; and
 - h) spoken on several occasions with legal counsel to Paul and Rana.

⁵ Amended Receivership Order at paragraph 30.

⁶ Since the Second Report, Rana’s counsel has requested an extension of time to deliver its privilege log under the Protocol. The Receiver did not object to the short extension requested, but reserves the right to refuse further objections if Rana does not timely produce the required information.

⁷ The Receiver notes that Rana requested an opportunity to participate in the Motion examination. The Receiver declined this request in order to maintain the integrity of the investigation.

2.3 Receiver's Attempt to Examine Rana

1. The Receiver has, in the course of its investigation, identified documents and obtained other evidence which demonstrate: (i) the grounds for the investigation appear to be well-founded; and (ii) alleged conduct by Rana after the date of receivership, which necessitated a consent order to ensure that the Receiver would be able to pursue assets for the benefit of stakeholders.
2. In weighing how to proceed, the Receiver considered the acrimonious nature of the proceedings, the Arbitrator's concerns regarding Rana's credibility, the Arbitrator and the Court's prior statements on Rana's conduct and the Receiver's obligations to proceed in a neutral matter. The Receiver determined that it would be beneficial to the investigation to provide Rana with an opportunity to address the relevant evidence, provide explanations relating to the matters under investigation, and bring any other relevant matters to the attention of the Receiver. However, given the specific concerns raised by both the Court and the Arbitrator, the Receiver determined that any such evidence should be given under oath.
3. On June 29, 2021, the Receiver's counsel requested that Rana attend for an examination "under oath". A copy of the email, identifying the meeting as an interview under oath and before an official examiner, is attached as Appendix "F".
4. On July 5, 2021, Rana's counsel replied, explaining that they would consider the request, but required additional time to confirm a date for the examination. A copy of the email is attached as Appendix "G".
5. On July 7, 2021, counsel to the Receiver wrote to Rana's counsel regarding information that Rana had visited the truck reseller to arrange for the sale of certain trailers owned by 2760111 Ontario Limited. Upon inspection, the truck reseller recognized the trailers as former ASR assets that had been transferred to Motion, and contacted the Receiver for further information regarding Rana's ability to transact. The Receiver immediately provided the limited information available to Rana's counsel and asked to examine Rana about these matters under oath. A copy of the email requesting that Rana agree to a consent order and be examined about the transfers under oath is attached as Appendix "H".
6. On July 13, 2021, Rana's counsel confirmed the time for Rana's interview and requested the topics to be discussed with Rana and production of the documents to be reviewed. A copy of the email from Rana's counsel is attached as Appendix "I".
7. On July 16, 2021, counsel to the Receiver provided counsel to Rana with a list of topics to be discussed at the examination. A copy of the email to Rana's counsel, with the list of topics appended, is attached as Appendix "J". While the list of topics identifies the meeting as an "examination", it again invites Rana to provide the Receiver with information on any matter Rana wishes to bring to the Receiver's attention.
8. On July 19, 2021, the Receiver provided counsel to Rana with additional information regarding the attempted trailer sales. A copy of the email exchange with Rana's counsel is attached as Appendix "K". Rana and the Receiver ultimately agreed to a consent order regarding sales of assets previously owned or operated by ASR or Motion. A copy of the consent order is attached hereto as Appendix "L".

9. On July 27, 2021, Rana's counsel wrote to counsel for the Receiver requesting further information on the logistics for the examination, including a suggested protocol for putting documents to the witness. A copy of the email exchange is attached as Appendix "M".
10. Also on July 27, 2021, one month after the Receiver requested to examine Rana under oath, Rana's counsel wrote to the Receiver's counsel to request information regarding the Receiver's authority to examine Rana. The Receiver's counsel responded that it would rely on the Amended and Restated Receivership Order and the Motion Order, compelling anyone with knowledge of Motion's affairs to attend an examination under oath. The email also reiterated that the Receiver intended to discuss the purported transfer of the trailers with Rana and again provided copies of the information regarding the trailers and that the Receiver had not agreed to provide documents in advance of the examination. At no point did Rana's counsel raise a procedural fairness objection or suggest that the parties seek direction from the Court if an examiner would be present. A copy of the email exchange is attached as Appendix "N".
11. At the scheduled time of the examination, Rana and his counsel appeared, but Rana refused to take an oath or make an affirmation and adjourned the examination to seek directions from the Court. Attached as Appendix "O" is the transcript of the examination, during which each of the Receiver's counsel and Rana's counsel set out their respective positions on the record. Attached as Appendix "P" is the email referenced by Rana's counsel in the statement.
12. The Receiver is of the view that it has the authority to examine Rana under oath:
 - a) under the Motion Order, as a party that the Receiver reasonably believes has knowledge of Motion's affairs. As such, by refusing to provide sworn testimony, Rana is currently in breach of this Court's Motion Order;
 - b) in connection with the Receiver's Investigation Mandate under the Amended Receivership Order; and
 - c) because Rana previously agreed to be examined under oath.
13. The Receiver is also of the view that its examinations under oath pursuant to the above-noted authority are governed by the *Rules of Civil Procedure* and case law relating to the conduct of examinations. The Receiver is advised that case law in this jurisdiction confirms that "there is nothing improper about counsel on cross-examination putting documents that are not included in an affidavit to a witness": *International Offtake Corporation v. Incryptex Ltd.*, 2017 ONSC 7537, para. 34, a copy of which is attached as Appendix "Q".
14. In the event that Rana disputed the Receiver's authority to conduct an examination under oath without prior production of the documents discovered in the course of the investigation, the Receiver would have requested advice and directions on this matter at the July 21, 2021 hearing. Given Rana's delay in raising this issue, the Receiver has been prejudiced by requiring it to incur the costs of preparation for an examination and an additional court attendance which should have been unnecessary.

15. The Receiver is of the view that Rana's late-breaking demand that any examination take place either: (i) not under oath; or (ii) only after all documents to be put to Rana during the examination have been provided to him in advance will not advance the Investigation Mandate because:
 - a) if Rana is unwilling to provide sworn testimony or allow his testimony to be introduced in these proceedings, the potential value of such testimony in any report to Court is limited. Indeed, the fact that Rana was willing to provide testimony but not confirm its accuracy to the best of his ability is in itself suspect;
 - b) the Receiver's questions for Rana involve matters in which he was intimately involved. To the extent he is unfamiliar with a document, the absence of his knowledge is important to the investigation;⁸ and
 - c) the disclosure of information that the Receiver obtained in the course of its investigation to Rana in advance of Rana's examination has the potential to compromise the integrity of the investigation.
16. The Receiver is of the view that Rana improperly adjourned his examination contrary to rule 34.14 and refused to take an oath or make an affirmation contrary to rule 34.15. As set out in this Report, Rana had ample opportunity to raise any concerns about the conduct of the examination prior to the attendance but improperly adjourned the examination 40 minutes after it was scheduled to begin by his refusal to take an oath or make an affirmation.

3.0 Request for Advice and Directions

1. The Receiver is seeking the Court's advice and direction in connection with the Motion Order and on the conduct of the Investigation Mandate.
2. While the Receiver sought the examination to provide Rana with an opportunity to explain the issues identified by the Arbitrator and matters discovered in the course of the Receiver's investigation, if Rana is unprepared to provide sworn testimony or to answer questions without reviewing the Receiver's file, the Receiver is prepared to report to Court on the basis of the information currently in its possession.
3. Alternatively, the Receiver seeks direction from the Court on the appropriate manner in which to examine Rana considering the need to obtain truthful information, including his lack of knowledge on certain subjects.
4. In light of the history of these proceedings and the Court's acknowledgement that Rana has previously "perpetuated a lack of transparency" and the acknowledgment of Rana's expert that certain conduct "could constitute red flags for potential fraud", the Receiver does not believe that an interview without the obligations of an oath will be beneficial to this Court's ultimate determination of the issues. Similarly, given the nature of the allegations, requiring the Receiver to provide documents in advance will not further the fact-finding mandate.

⁸ The Receiver notes that Mr. Dhindsa's examination took place under oath and without receiving documents in advance. Mr. Dhindsa's lack of knowledge as to certain operational matters and his spontaneous recollections of other events are relevant to the investigation and will be included in a subsequent report to Court.

5. The Receiver is also seeking that Rana pay personally and forthwith the Receiver's costs of preparing this Report, costs thrown away due to Rana's refusal to be examined under oath, and costs of the continuation of his examination pursuant to rule 34.14(2). Rana had over a month to raise any such concerns with the Receiver and instead, waited until after the scheduled examination began to confirm his position, resulting in delay, an additional court attendance, and related additional costs.

* * *

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

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

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Lawyers for KSV Restructuring Inc. in its capacity as
Receiver

APPENDIX “J”

[ATTACHED]

May, Kieran

From: Koehnen, Mr. Justice Markus (SCJ) <[REDACTED]>
Sent: Wednesday, August 04, 2021 9:56 AM
To: May, Kieran; JUS-G-MAG-CSD-Toronto-SCJ Commercial List; Levine, Natalie; Picone, John M.; Kelman, David; ngoldstein@ksvadvisory.com; Shara Roy; jflood@litigate.com; chunter@litigate.com
Subject: Re: Randhawa v Randhawa et al., CV-18-593636-00CL - Chambers Appointment

Email Endorsement

This endorsement arises out of a case conference for directions relating to an examination in an investigation by an Inspector.

Rana was to be examined under oath by the Inspector last week. Rana took the position on the examination that he would be examined under oath only if he were given production of all relevant documents before the examination. In the alternative, Rana offered to proceed by way of an interview that was not conducted under oath. In light of the disagreement, the examination was adjourned.

An investigation is not a civil action to which the rules of production and discovery apply. It is designed to assist fact finding by providing a more streamlined process that avoids some of the obstruction that can occur in litigation. That indeed is why the investigation was ordered here, because Rana was being less than forthcoming and transparent.

Rana argued today that the Inspector has obtained approximately 1 million documents and that it would be unfair to subject Rana to examination without having production of all documents relevant to the investigation. I do not share that view. The focus of the investigation is on self interested transactions that Rana has entered into or that others have entered into under his control and direction. It was ordered because Rana was not cooperating in producing information. If Rana perceives any unfairness in being subjected to questions without the benefit of discovery, he is the author of his own misfortune. Had Rana complied with earlier directions by the Arbitrator who ordered the investigation, he would not be in this position.

Moreover, compelling the Inspector to engage in what is akin to documentary production would materially increase the cost and time the Investigation will take. This will only further deplete the value of the corporate estate and Rana's share in it.

The Inspector seeks costs of \$5,000 for costs thrown away on the aborted examination, preparation of a report for today's attendance and today's attendance. That strikes me as more than reasonable. Rana submits that no report was required for today and that \$2,500 is a more appropriate figure. I disagree. Time was limited to 30 minutes today. The case conference was booked at the last minute and was heard outside of ordinary court hours. Had I not received materials that set out the background to the issue, it would not have been possible to complete the case conference in the time available. Rana will pay the Inspector's costs of \$5000 forthwith.

Justice Markus Koehnen
Ontario Superior Court of Justice

361 University Ave.
Toronto, Ont.
M5G 1T3
[REDACTED]

From: May, Kieran

Sent: Tuesday, August 3, 2021 5:21 PM

To: May, Kieran <kmay@cassels.com>; Koehnen, Mr. Justice Markus (SCJ) <[REDACTED]>; JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>; Levine, Natalie <nlevine@cassels.com>; Picone, John M. <jpicone@cassels.com>; Kelman, David <dkelman@cassels.com>; ngoldstein@ksvadvisory.com <ngoldstein@ksvadvisory.com>; Shara Roy <sroy@litigate.com>; jflood@litigate.com <jflood@litigate.com>; chunter@litigate.com <chunter@litigate.com>

Subject: Randhawa v Randhawa et al., CV-18-593636-00CL - Chambers Appointment

When: Wednesday, August 4, 2021 9:00 AM-9:30 AM.

Where: <https://cassels.zoom.us/j/94768810576?pwd=YjA4aUhiUE4vY1JvWWNxMUNOU1Y4Zz09>

Zoom Details:

<https://cassels.zoom.us/j/94768810576?pwd=YjA4aUhiUE4vY1JvWWNxMUNOU1Y4Zz09>

Meeting ID: 947 6881 0576

Password: 523076

One tap mobile

+13126266799,,94768810576# US (Chicago)

+13462487799,,94768810576# US (Houston)

Caselines:

<https://ontariocourts.caselines.com/s/s/25398>

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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

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

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Receiver