

COURT FILE NUMBER **2301-01408**

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF/
APPLICANT **ROYAL BANK OF CANADA**

DEFENDANTS/
RESPONDENTS **BRM CANADA GROUP INC., SAIMA QADEER and
CHOUDHRY QADEER AKRAM**

DOCUMENT **APPLICATION FOR RECEIVER AND
MANAGER OVER PROPERTY**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY FILING
THIS DOCUMENT

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File No. 404600.000869



LL

C110711

Dec 19, 2023
COM

NOTICE TO: THE SERVICE LIST ATTACHED AS SCHEDULE "A"

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date	December 19, 2023
Time	11:00 a.m.
Where	Calgary Courts Centre 601 5 Street SW, Calgary, Alberta T2P 5P7 (via WebEx Vide Conference)
Before Whom	The Honourable Justice C. C. J. Feasby, K.C.

Go to the end of this document to see what else you can do and when you must do it.

REMEDY CLAIMED OR SOUGHT:

1. The Plaintiff/Applicant, Royal Bank of Canada (“**RBC**” or the “**Bank**”) seeks an Order substantially in the form attached hereto as **Schedule “B”** for the following relief:

(a) deeming service of this Application, together with all supporting materials, to be good and sufficient;

(b) appointing KPMG Inc. (“**KPMG**”) as the receiver and manager, pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 195, c B-3, section 13(2) of the *Judicature Act*, RSA 2000, c J-2, section 65(7) of the *Personal Property Security Act*, RSA 2000, c P-7, and section 49(1) of the *Law of Property Act*, RSA 2000, c L-7, of the following property of the Defendant/Respondent, BRM Canada Group Inc. (“**BRM**”):

(i) the lands legally described as:

CONDOMINIUM PLAN 0814562
UNITS 23-29, 31-33 AND 36
AND ALL APPLICABLE ONE TEN THOUSANDTH SHARES IN
THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

and municipally described Units 2106, 2102, 2110, 2114, 2118, 2122, 2126, 3115, 3107, 3103, and 3119, 5150 – 47 Street NE, Calgary, Alberta, T3J 4N4, together with all current or future improvements and fixtures thereon (the “**Lands**”);

(ii) all present and future rents reserved or payable under leases relating to the Lands, and all present or future leases relating to the Lands and the benefits and advantages to be derived therefrom;

(iii) all property, assets, rights and undertaking of every nature and kind which is personal in nature (including bank accounts), that is located in or upon, arising out of or used in conjunction with the Lands

(collectively with the Lands, the “**Property**”);

(c) granting costs of this Application on a solicitor-and-own-client, full indemnity basis; and

- (d) granting such further and other relief as counsel may request and this Honourable Court may deem just and appropriate.

GROUNDINGS FOR MAKING THIS APPLICATION:

The Parties

2. The Plaintiff, RBC, is a chartered bank incorporated under the *Bank Act*, SC 1991, c 46, Schedule I, which is extra-provincially registered to carry on business in the Province of Alberta, with branches located in the City of Calgary and elsewhere throughout the Province of Alberta and Canada.
3. The Defendant, BRM, is a corporation incorporated pursuant to the laws of the Province of Alberta, with its registered office in Rocky View County, Alberta, and is the mortgagor under a mortgage dated October 23, 2019, as registered with the Land Titles Office on November 20, 2019 as Instrument No. 191 235 752 (the “**Mortgage**”).
4. The Defendants, Saima Qadeer and Choudhry Qadeer Akram, are each individuals residing, to the best of RBC’s knowledge, in Rocky View County, Alberta, both being directors of BRM and joint and several guarantors.

The Loan and the Security

5. Pursuant to a commitment letter dated October 3, 2019 (the “**Loan Agreement**”), RBC advanced a mortgage loan in the principal amount of \$3,900,000.00, with a fixed rate interest rate of 4.11% per annum, calculated semi-annually, payable semi-monthly, until maturity on November 1, 2022 (the “**Loan**”).
6. The Loan is secured by, among other things, the following:
 - (a) the Mortgage, which is a first ranking mortgage in respect of the Lands;
 - (b) a first-ranking general assignment of rents, in respect of the Lands, dated October 23, 2019 (the “**Assignment**”); and
 - (c) a site specific security agreement dated October 23, 2019 (the “**Security Agreement**”), pursuant to which BRM granted a first-ranking security interest in favour of RBC on all

present and after-acquired personal property situated on, used in connection with, or arising from the Lands;

(collectively, the “**Security**”).

7. Among other things, the Loan Agreement and the Mortgage provide that:
 - (a) the term of the Loan and the Mortgage is three years commencing on November 1, 2019 and ending on November 1, 2022; and
 - (b) the entire balance of the Loan, including all principal and interest, is due and payable upon maturity.
8. Furthermore, Mortgage states that, in the event of default, RBC is entitled to appoint a receiver and manager in respect of the Lands and the rents and profits therefrom, and such receiver and manager shall, as agent for RBC, have full power and unlimited authority to sell all or any part of the Lands.
9. Similarly, upon a default by BRM under the terms of the Security Agreement, RBC is entitled to, among other things, appoint a receiver to take possession of, preserve, and realize upon the collateral.

Defaults, Demand and Procedural History

10. Pursuant to certain letters of RBC, RBC agreed to permit the Loan to mature on January 1, 2023. BRM failed to repay the Loan in full at any time on, before or after January 1, 2023.
11. Consequently, on or about January 13, 2023, RBC issued to BRM a demand for payment of the whole of the indebtedness owing under the Loan Agreement and secured by the Mortgage, in the amount of \$3,742,468.83, plus interest and charges continuing to accrue (the “**Demand**”). Enclosed with the Demand was a Notice of Intention to Enforce Security, pursuant to section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 in respect of the Security (the “**NITE**”).
12. Notwithstanding the Demand and the NITE, the Defendants failed to pay the amounts owing.
13. Accordingly, on February 1, 2023, RBC commenced the within Action by filing a Statement of Claim. On April 12, 2023, the Defendants filed their Statement of Defence, which lacks any merit.

14. On or about September 13, 2023, RBC obtained an independent appraisal of the Lands. The appraisal provides an as-is market value of \$3,010,000.00 and a liquidation value of \$2,859,500.00. Thus, there is no equity in the Lands after the indebtedness owed to RBC.
15. Further, on or about September 22, 2023, RBC issued to the tenants of the Lands a notice of the Assignment (with a copy to BRM's counsel), requesting that the tenants direct all present and future rent payments to RBC's legal counsel in trust (the "**Assignment Notice**"). To date, neither RBC nor its legal counsel has received any rental payments in respect of the Lands.
16. As of November 6, 2023, the total amount owing under the Loan and the Security is \$3,660,941.69, with interest, legal fees and other chargeable costs continuing to accrue thereon.

A Receiver and Manager is Just and Convenient

17. In light of the foregoing, the appointment of a receiver and manager in respect of the Property is just and convenient, and indeed necessary, given that, among other things:
 - (a) RBC is a first-ranking secured lender of BRM, and has contractual rights to appoint a receiver and manager under the Mortgage and Security Agreement;
 - (b) BRM is insolvent, given that it has failed to repay the Loan in full when it matured on or about January 1, 2023, and therefore has ceased paying current obligations in the ordinary course of business as they generally become due;
 - (c) there is no equity in the Lands, thereby making RBC is the primary economic stakeholder and fulcrum creditor;
 - (d) RBC has lost confidence in the management of BRM to protect its first-ranking security interest given, among other things, BRM's apparent interference with RBC's Assignment Notice, and general lack of cooperation and transparency and unreasonableness;
 - (e) a Receiver is necessary to prevent further loss and prejudice to RBC;
 - (f) the appointment of the Receiver will not only protect the interests of RBC, but also of other affected stakeholders, namely existing tenants of the Lands;

- (g) the appointment of the receiver and manager will be the most effective and efficient way to realize on the value of its security, and minimize the costs associated with that process; and
- (h) KPMG is a licensed insolvency trustee, with considerable expertise in such matters, and has consented to act as receiver and manager.

18. Such further or other grounds counsel may advise and this Honourable Court may permit.

MATERIAL OR EVIDENCE TO BE RELIED ON:

- 19. the Affidavit of Jasdeep (Jessica) Chohan, sworn on November 8, 2023;
- 20. the Affidavit of Value of Chris Chornohos, sworn on November 7, 2023;
- 21. the Consent to Act as Receiver and Manager executed by KPMG Inc.;
- 22. the pleadings and other materials filed in the within proceedings; and
- 23. such further and other material or evidence as counsel may advise and this Honourable Court may permit.

APPLICABLE RULES:

- 24. *Alberta Rules of Court*, AR 124/2010, and in particular Rules 1.2, 1.3, 1.4, 6.1, 6.2, 6.3, 6.47, and 11.27.
- 25. *Bankruptcy and Insolvency General Rules*, CRC, c 1978, c 368, and in particular Rules 3, 6, 9, and 13.

APPLICABLE ACTS AND REGULATIONS:

- 26. the *Bankruptcy and Insolvency Act*, RSC 195, c B-3, and in particular sections 243 and 244 thereof;
- 27. the *Judicature Act*, RSA 2000, c J-2, and in particular section 13(2) thereof;
- 28. the *Personal Property Security Act*, RSA 2000, c P-7, and in particular section 65 thereof;
- 29. the *Law of Property Act*, RSA 2000, c L-7, and in particular section 49 thereof; and

30. such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

ANY IRREGULARITY COMPLAINED OF OR OBJECTION RELIED ON:

31. None.

HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:

32. Before the Honourable Justice C. C. J. Feasby, K.C., via WebEx video conference, with some or all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicant(s) a reasonable time before the application is to be heard or considered.

SCHEDULE "A"

Service List

(See attached)

COURT FILE NUMBER **2301-01408**

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF/
APPLICANT ROYAL BANK OF CANADA

DEFENDANTS/
RESPONDENTS BRM CANADA GROUP INC., SAIMA QADEER
and CHOUDHRY QADEER AKRAM

DOCUMENT SERVICE LIST

RECIPIENT	RECIPIENT STATUS	SENT BY
Royal Bank of Canada 5th Floor, 335 - 8 Avenue SW Calgary, AB T2P 1C9 Attention: Jessica Chohan jessica.chohan@rbc.com	Plaintiff/Applicant	<i>Email</i>
Borden Ladner Gervais LLP 1900, 520 – 3 Avenue SW Calgary, AB T2P 0R3 Attention: Jack Maslen JMaslen@blg.com Tiffany Bennet TiBennett@blg.com	Counsel to the Plaintiff/ Applicant, Royal Bank of Canada	<i>Email</i>
Reliance Legal Group LLP Commonwealth Centre Unit 1101, 3961 – 52 Avenue NE Calgary, AB T3J 0J7 Attention: Taylor L. Johnson tj@rlglaw.ca	Counsel to the Defendants/ Respondents, BRM Canada Group Inc., Saima Qadeer, and Choudhry Qadeer Akram	<i>Email</i>

<p>KPMG Inc. 3100, 205 - 5 Avenue SW Calgary, AB T2R 0E1</p> <p>Attention: Neil Honess neilhoness@kpmg.ca</p> <p>Jacqueline Shellon jshellon@kpmg.ca</p> <p>Joe Sithole jsithole@kpmg.ca</p>	<p>Proposed Receiver and Manager of BRM Canada Group Inc.</p>	<p><i>Email</i></p>
<p>Cassels Brock & Blackwell LLP 3810, 888 – 3 Street SW Calgary, AB T2P 5C5</p> <p>Attention: Jeffery Oliver joliver@cassels.com</p> <p>Danielle Maréchal dmarechal@cassels.com</p>	<p>Counsel to the Proposed Receiver and Manager of BRM Canada Group Inc.</p>	<p><i>Email</i></p>
<p>APNA – Punjab Grocery & Movies & Gifts Corp. 120 Saddlecrest Gardens NE Calgary, AB T3J 0C3</p>	<p>Caveator</p>	<p><i>Courier</i></p>
<p>Canada Revenue Agency Department of Justice Canada Prairie Regional Office – Edmonton 300, 10423 – 101 Street NW Edmonton, AB T5H 0E7</p> <p>Attention: George Body George.Body@justice.gc.ca</p> <p>Marlene Barrientos Marlene.Barrientos@justice.gc.ca</p>	<p>Counsel for Canada Revenue Agency</p>	<p><i>Email / Courier</i></p>
<p>Canada Revenue Agency 220 – 4 Avenue SE Calgary, AB T2G 0L1</p>		<p><i>Courier</i></p>
<p>Canada Revenue Agency Surrey National Verification and Collections Centre 9755 King George Boulevard Surrey, BC V3T 5E1</p>		<p><i>Courier</i></p>

<p>Alberta Finance & Treasury Legal Team Legal Services Division 2nd Floor, Peace Hills Trust 10011 – 109 Street Edmonton, AB T5J 3S8</p> <p>Attention: Scott Chen Scott.Chen@gov.ab.ca</p> <p>Rachelle Sorgiovanni Rachelle.Sorgiovanni@gov.ab.ca</p>	<p>Government of Alberta</p>	<p><i>Email / Courier</i></p>
<p>City of Calgary - Legal Division Calgary Municipal Building 12th Floor, 800 Macleod Trail SE Calgary, AB T2G 2M3</p> <p>Email: Law.reception@calgary.ca</p>		<p><i>Email / Courier</i></p>
<p>City of Calgary PO Box 2100, Stn Main Calgary, AB T2P 2M5</p>		<p><i>Registered Mail</i></p>

SCHEDULE "B"

Form of Receivership Order

(See attached)

COURT FILE NUMBER **2301-01408**

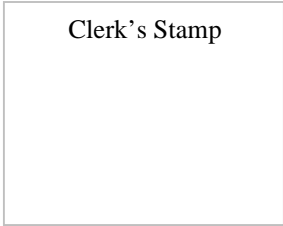
COURT COURT OF KING'S BENCH OF ALBERTA

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PLAINTIFF/
APPLICANT **ROYAL BANK OF CANADA**

DEFENDANTS/
RESPONDENTS **BRM CANADA GROUP INC., SAIMA QADEER and
CHOUDHRY QADEER AKRAM**

DOCUMENT **RECEIVERSHIP ORDER**



ADDRESS FOR
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File No. 404600.000869

DATE ON WHICH ORDER WAS PRONOUNCED: **December 19, 2023**

LOCATION WHERE ORDER WAS PRONOUNCED: **Calgary, Alberta**

NAME OF JUSTICE WHO MADE THIS ORDER: **The Honourable Justice C. C. J.
Feasby, K.C.**

UPON THE APPLICATION of the Plaintiff/Applicant, Royal Bank of Canada (“**RBC**” or the “**Bank**”), in respect of the Defendant/Respondent, BRM Canada Group Inc. (the “**Debtor**”); **AND UPON** having read the Application, the Affidavit of Jasdeep (Jessica) Chohan and the Affidavit of Service of [redacted], and other pleadings and materials filed in the within Action; **AND UPON** having read the consent of KPMG Inc. (“**KPMG**”) to act as court-appointed receiver and manager herein (the “**Receiver**”), filed; **AND UPON** having heard counsel for RBC, counsel for the Defendants, counsel for the proposed Receiver, and any other counsel or other interested parties present,

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of the Application for this order (the “**Order**”) is hereby deemed good and sufficient, and this Application is properly returnable today, and service on any other person is hereby dispensed with.

APPOINTMENT

2. Pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”) section 13(2) of the *Judicature Act*, RSA 2000, c J-2, section 65(7) of the *Personal Property Security Act*, RSA 2000, c P-7 (the “**PPSA**”), section 99(a) of the *Business Corporations Act*, RSA 2000, c B-9 and section 49(1) of the *Law of Property Act*, RSA 2000, c L-7, KPMG is hereby appointed Receiver, without security, of the following property of the Debtor:
 - (a) lands as more particularly described in Schedule “A” of this Order, together with all current or future improvements and fixtures thereon (the “**Lands**”);
 - (b) all present and future rents reserved or payable under leases relating to the Lands, and all present or future leases relating to the Lands and the benefits and advantages to be derived therefrom;
 - (c) all property, assets, rights and undertaking of every nature and kind which is personal in nature (including bank accounts), that is located in or upon, arising out of or used in conjunction with the Lands(collectively, the “**Property**”).

RECEIVER’S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the 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 Property and any and all proceeds, receipts and disbursements arising out of or from the Property (including, without limitation, the collection of rents and profits from the Property, prepaid rents or arrears of rents, any damage or security deposits, third party deposits or bank accounts of the Debtor

relating to the Property), which shall also include the Receiver's ability to abandon, dispose of, or otherwise release any interest in any of the Property;

- (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of 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 any business of the Property, 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 the Debtor in respect of the Property;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, property managers, maintenance staff, 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. Without limiting the generality of the foregoing, the Receiver is hereby empowered and authorized, but not required, to enter into a property management agreement with a property manager (with the prior consent of the Plaintiff), without further approval or order of this Court;
- (e) to have unrestricted access to the Lands for the purpose of exercising its power and authority as Receiver;
- (f) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Property or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor relating to the Property and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor in relation to such amounts;
- (h) to settle, extend or compromise any indebtedness owing to or by the Debtor in respect of the Property;