



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-25-00751716-00CL
CV-25-00752599-00CL

DATE: September 29, 2025

NO. ON LIST: 2 & 3

TITLE OF PROCEEDING: ROYAL BANK OF CANADA v. JADE EQUIPMENT CO LTD
et al

THE TORONTO-DOMINION BANK v. TRENCHLESS
UTILITY EQUIPMENT INC.

BEFORE JUSTICE: J. DIETRICH

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

- [1] Two receivership applications are before me today.
- [2] First in CV-25-00751716-00CL, Royal Bank of Canada ("RBC") seeks an order appointing KPMG Inc. ("KPMG") as receiver of the property of Jade Equipment Co. Ltd. ("Jade") and Elvaan Group Inc. ("EGI") pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act* ("BIA") and s. 101 of the *Courts of Justice Act* ("CJA").
- [3] Second in CV-25-00752599-00CL, the Toronto-Dominion Bank ("TD") seeks an order appointing Albert Gelman Inc. ("AGI") as receiver of the property of Trenchless Utility Equipment Inc. ("Trenchless") pursuant to s. 243 of the BIA and s. 101 of the CJA.
- [4] EGI is the parent company of both Jade and Trenchless (collectively, the "Elvaan Group").
- [5] The application by RBC was originally before me on September 24, 2025. RBC was seeking not only the appointment of a receiver over Jade and EGI, but also the appointment of an investigative receiver over Trenchless. At that time I made an endorsement adjourning the matter until today and making the TD application returnable today as well. Since that time, RBC has advised that as TD is proceeding with its application, RBC is not seeking the appointment of an investigative receiver over Trenchless.
- [6] BDC Capital Inc. ("BDC") also appeared today. BDC is a secured creditor of EGI and Trenchless – owed approximately \$4.4 million. It is not disputed that the BDC facility is also in arrears. BDC supports the relief sought by both RBC and TD.
- [7] The Elvaan Group has filed three affidavits of Susman Mukherjee (sworn September 24, 2025, September 26, 2025 and September 28, 2025). They take the position that the credit facilities owing to RBC, TD and BDC will be 'brought current' in the next 30-45 days. These payments are to be made from existing Elvaan Group accounts receivable and going forward either a complete refinancing will have taken place or factoring facilities will be entered into. Non-binding letters of intent for certain accounts receivable factoring facilities were attached to Mr. Mukherjee's most recent affidavit. As such, the Elvaan Group requests an adjournment or stay of the relief sought by RBC and TD until the end of October (or a dismissal of the applications without prejudice to seeking the relief at a later time).
- [8] For the reasons set out below, I grant the relief sought by both RBC and TD.

Background

- [9] The Elvaan Group is a corporate group consisting of EGI, Jade, and Trenchless. EGI is the parent holding company, while Jade and Trenchless are the operating entities. The companies operate under the trade name "Elvaan Equipment Solutions".
- [10] There is a dispute about how intermingled the business of Jade and Trenchless are. However, Jade and Trenchless both carry on a business servicing, selling and renting new, used, and re-built motor

graders, wheel loaders, excavators, and other road construction equipment, as well as supplying parts and attachments for such equipment.

- [11] Jade operates from premises at 47 Forest Plain Road, Oro Medonte, Ontario and 10807-209 Street, Edmonton, Ontario.
- [12] Trenchless operates from leased premises at 2355 Cawthra Road, Mississauga Ontario.
- [13] Jade and Trenchless share a management team and are insured under common insurance policies. The evidence is that the Elvaan Group employs approximately 20 people.
- [14] RBC and TD take the position that there is uncertainty regarding the separation of their respective inventories. The Elvaan Group advises that certain equipment has historically been moved between the companies but on a consignment basis. RBC and TD advise they did not consent to any consignment arrangement. The Elvaan Group advises the equipment has all been moved to the appropriate premises.
- [15] The Elvaan Group operates a single website—Elvaan.com—identifying their business as “Elvaan Equipment Solutions (Formerly Trenchless Utility Equipment & Jade Equipment Company)”.
- [16] Jade and Trenchless have also entered into contracts as “Elvaan Equipment Solutions”.
- [17] There is a dispute about the intermingling of books and records an accounting perspective. RBC has provided evidence that Jade and Trenchless’ transactions are commonly journalized and processed into a single trial balance. Further RBC submits that projected financials provided by the Elvaan Group’s management provide that Jade will be paying Trenchless’ secured creditors on a monthly basis and that a significant intercompany receivable exists as Jade has advanced funds to Trenchless.
- [18] The Elvaan Group acknowledges that Jade and Trenchless had certain accounting issues related to the software being used. However, Mr. Mukherjee provided evidence that those issues were being corrected to ensure the financial statements accurately reflect the financial pictures of Jade and Trenchless as separate legal and financial assets.
- [19] As outlined below, it is not disputed that RBC has security over EGI and Jade, that TD has security of Trenchless and that BDC has security over EGI and Trenchless.
- [20] Further it is not disputed that Jade owes certain amounts (approximately \$300,000) to CRA for unpaid HST, Trenchless owes certain amounts (approximately \$30,000) to CRA for unpaid source deductions and both Jade and Trenchless owe amounts to their landlords.

RBC Facility

- [21] On or around September 23, 2024, Jade and RBC entered into a credit agreement (the “**RBC Credit Agreement**”) which amended and restated pre-existing credit agreements among RBC and Jade’s predecessor entities by amalgamation. Pursuant to the RBC Credit Agreement, RBC extended various credit facilities including (1) a revolving demand facility, (2) a non-revolving term facility, and (3) a credit card facility, in the aggregate maximum amount of \$ 6,478,842.50.
- [22] The credit facilities under the Jade Credit Agreement are secured by various security including, but not limited to: a. a general security agreement granting RBC a security interest in the property of Jade (the “**Jade GSA**”); b. a secured guarantee from EGI, which is supported by a general security agreement granting RBC a first-ranking security interest in the property of EGI (the “**EGI GSA**”, and together with the Jade GSA, the “**RBC GSAs**”).
- [23] Pursuant to a Master Client Agreement for Business Clients between Trenchless and RBC dated as of October 9, 2023, RBC also extended a credit card facility to Trenchless in the amount of up to \$100,000. Jade has guaranteed that facility, which guarantee is supported by the Jade GSA.
- [24] Jade has been in default under the RBC Credit Agreement since May of 2025, including because required monthly payments have not been made since that time.

- [25] On August 6, 2025, RBC demanded repayment of amounts owed to it and delivered the required notices pursuant to s. 244 of the BIA.
- [26] The Elvaan Group does not dispute the amount owing, that defaults have occurred and that demands have been sent and that the required notices have been delivered.

TD Facility

- [27] Trenchless is indebted to TD with respect to a credit facility made available under a Letter Agreement, as amended, dated April 26, 2022 (collectively, the “**TD Loan Agreement**”).
- [28] The TD Loan Agreement provided for an operating line loan facility in the amount of \$1,600,000.00 (the “**TD Operating Loan**”) and a fixed rate term loan facility in the amount of \$300,000.00 (the “**TD Term Loan**”), to be utilized for general working capital and for leasehold improvement loan for the Debtor’s office in Mississauga.
- [29] Among other things, TD holds a General Security Agreement dated May 3rd, 2022 from Trenchless, (the “**TD GSA**”).
- [30] On July 3, 2025, TD provided notice of certain defaults under TD Loan Agreement – being breaches of financial reporting covenants. Trenchless takes the position that these defaults were cured as reporting was provided (albeit late).
- [31] Separately on July 28, 2025, TD demanded repayment of amounts owing under the TD Loan Agreement, including because a payment default had been made under the TD Term Loan. The TD Operating Loan is a demand loan, and therefor no defaults were required – however at the time of the TD Demand, the TD Operating Loan was in excess of its permitted availability. With respect to the TD Term Loan, payments were typically made through the TD Operating Loan, however, because the TD Operating Loan was over its permitted availability, that was not possible and at the time of demand by TD, the TD Term Loan monthly payment had not been made.
- [32] On July 28, 2025, TD also delivered notices pursuant to s. 244 of the BIA.
- [33] As of September 17, 2025, the amount owing to TD by Trenchless was approximately \$1.7 million.

Issues

- [34] The issues to be determined today, are whether it is just or convenient to appoint a receiver over Jade and EGI as requested by RBC and over Trenchless as requested by TD.

Analysis

- [35] There is no dispute that the test for the appointment of a receiver under s. 243 of the BIA or s. 101 of the CJA is whether it is just or convenient.
- [36] In determining whether it is just or convenient to appoint a receiver the Court must have regard to all of the circumstances of the case particularly the nature of the property and the rights and interests of all parties in relation to the property: see *Bank of Nova Scotia v Freure Village of Clair Creek*, [1996] OJ No 5088 at para 10. While the appointment of a receiver is generally an extraordinary equitable remedy, where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: see *Elleway Acquisitions Ltd. v. The Cruise Professionals Limited*, 2013 ONSC 6866 at para 27.
- [37] As summarized by Justice Osborne in *Canadian Equipment Finance and Leasing Inc v The Hypoint Company Limited*, 2022 ONSC 6186 at paras 24-25 a number of factors have historically been taken into account in the determination of whether it is appropriate to appoint a receiver. The factors are not a checklist, but rather a collection of considerations to be viewed holistically, they include:

- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
- b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- c. the nature of the property;
- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has a right to appointment under the loan documentation;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties; and
- p. the goal of facilitating the duties of the receiver.

[38] In this case, it is just and convenient to appoint a receiver as requested by both RBC and TD.

[39] Jade and EGI owe RBC in excess of \$6 million. Trenchless owes TD approximately \$1.7 million.

[40] There is no dispute that defaults have occurred under the RBC Credit Agreement and GSA.

[41] As for TD, Trenchless argues that reasonable notice of the defaults was not provided, however, the TD Operating Loan is a demand facility. As for the TD Term Loan, payment was missed. Trenchless argues that payment was only missed because the payment would be typically be made by resort to the TD Operating Loan and claims that it was TD's choice not to process such payment. However, this overlooks that the TD Operating Loan exceeded its permitted availability. Further, there is no dispute that other defaults (for example unpaid source deductions or the BDC default which result in a cross default under the TD Credit Facility) also exist.

[42] Demand and the required notices under s. 244 of the BIA were made by TD and RBC approximately two months ago.

[43] Since the end of July, the Elvaan Group has engaged a broker to find replacement financing. This morning an affidavit was filed attaching letters of intent with respect to account receivable financing facilities for both Jade and Trenchless. Those letters of intent, however, require, among other conditions, that RBC, TD and BDC agree to subordinate their security over the various members of the Elvaan Group. Each of RBC, TD and BDC advised they were not willing to do so. In any event, the account receivable factoring would only be intended to provide additional liquidity to the Elvaan Group – not repay RBC or TD in full.

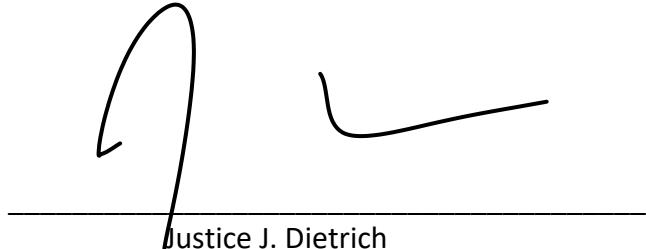
[44] The Elvaan Group acknowledges that the letters of intent are conditional, but submits that the letters of intent show that the underlying business is viable and that a refinancing is imminent.

[45] The affidavits provided by Mr. Mukherjee do indicate that he has taken significant steps to turn around the Elvaan Group's business and is in the process of completing a turnaround plan. However, it is not clear to me that refinancing is imminent. Despite having engaged a broker approximately two months ago, no refinancing has materialized.

- [46] The Elavaan Group relies on the decision of Justice Kurtz in *Mitsubishi HC Capital Canada Inc. v. Ribs Transport Inc.* 2025 ONSC 3066. In that case however, a significant factor at play was the debtor's substantial compliance with a second settlement agreement which Justice Kurtz found was binding. Here no equivalent agreement exists.
- [47] Both RBC and TD are contractually entitled to seek the appointment of a receiver under the RBC GSAs and the TD GSA.
- [48] Each of RBC, TD and BDC submits that they have lost confidence in management of the Elvaan Group. This loss of confidence is reasonable, not only because of the concerns raised regarding the intertwining of those corporations, but also because of substantial losses incurred in the past year. Further, the amounts owing to landlords exceed \$160,000 by Trenchless. The amount owing by Jade to its landlord is not clear, but, appears to be in excess of \$50,000. Further, although Jade has recently decided to cease operating at the Edmonton premises, Jade remains liable under that lease. There is also no dispute that significant amounts are owed by both Jade and Trenchless to the CRA in respect of HST by and source deductions respectively.
- [49] The Elvaan Group takes issues with the costs of the two receivership proceedings. However, that cost is a result of the structure of the financing which the Elvaan Group chose to enter into.
- [50] I am not persuaded that, as the Elvaan Group submits, the appointment of receivers will destroy the business of Jade and Trenchless. A court-appointed receiver is to deal with the property over which it is appointed in a commercially reasonable manner.
- [51] Both KMPG and AGI are qualified to act as receiver and have consented to do so.
- [52] Both of the receivership orders sought are appropriate and consistent with the Model Order of the Commercial List.

Disposition

- [53] Accordingly, I grant the receivership orders in the form signed by me today.



Justice J. Dietrich

Date: September 29, 2025