Court File No. CV-25-00742864-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

5009013 ONTARIO LTD., GIFTCRAFT MIDCO, INC., GIFTCRAFT HOLDINGS USA INC., GIFTCRAFT HOLDINGS, INC., GCI LIQUIDATING INC., RHI LIQUIDATING, LLC AND YSX LIQUIDATING INC.

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

CLAIMANT'S REPLY FACTUM OF ELSASSER HOLDING COMPANY, INC.

(returnable November 9, 2026)

October 30, 2026

ELSASSER HOLDING COMPANY, INC.
4109 Haven Dr.
Hood River, Oregon 97031

Cole Elsasser
President, Elsasser Holding Company, Inc.
coleelsasser@gmail.com

Self-represented officer of Elsasser Holding Company, Inc.

TO: THE SERVICE LIST

Court File No. CV-25-00742864-00CL

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Record references in this factum: **RF** is the Factum of Royal Bank of Canada dated October 23, 2026. **SB** is the Supplementary Brief of Royal Bank of Canada dated October 13, 2026. **MR**, **CR**, **RR** and **DMR** have the meanings given in Elsasser Holding's factum dated October 9, 2026. Defined terms have the meanings given in that factum.

PART I – OVERVIEW

1. RBC makes two arguments. First, that Elsasser Holding must prove Delaware law. Second, that the Change of Control provision applies only to "a going-concern sale in the ordinary course of business" (RF, para. 33). The first does not apply, because Elsasser Holding's claim is under the Subordination Agreement, which is governed by Ontario law. The second adds words the parties did not use.

2. The parties wrote a definition of Change of Control with no exception for a sale by a receiver. RBC asks the Court to add one. Elsasser Holding asks only that the agreement be applied as written.

PART II – REPLY

A. Delaware law

3. Elsasser Holding's claim arises under the Subordination Agreement, not the Note. The Subordination Agreement is governed by Ontario law (MR p. 82), as RBC accepts (RF, para. 27). It adopts the Note's definition of Change in Control by reference. The question is what the parties to an Ontario contract meant when they used that defined term.

4. Elsasser Holding does not rely on Delaware law, and its argument does not depend on it. RBC has not led any evidence of Delaware law either, and it does not say how Delaware law would read the words differently. RBC itself asks the Court to interpret the definition using Canadian principles (RF, paras. 42-47), and relies on the Note's Event of Default provision without any evidence of Delaware law (RF, para. 48).

5. The definition is also plain on its face: "the sale or other disposition of all or substantially all of the assets of RipSkirt" (MR pp. 61-62). No expert is needed to read those words.

B. The Ripskirt Transaction was a going-concern sale

6. RBC says the sharing provision applies only to "a going-concern sale in the ordinary course of business" (RF, para. 33). Neither phrase appears in the Note or the Subordination Agreement.

7. In any event, the Ripskirt Transaction was a going-concern sale. In recommending it, the Receiver reported that "the Ripskirt APA provides for a going-concern sale to the Ripskirt Purchaser, which preserves significant value" (Second Report, para. 66(f), RR p. 49). RBC filed that report as part of its own record.

8. "Ordinary course of business" cannot be the test. A sale of all or substantially all of a company's assets is never made in the ordinary course of business. On RBC's reading, clause (x) of the definition could never apply.

9. RBC also points out that the sale agreement was signed by the Receiver, not by a Giftcraft company (RF, para. 34). The definition does not say who must sell. It applies to any "sale or other disposition" of RipSkirt's assets.

10. RBC asks the Court to read the agreements "in accordance with sound commercial principles and good business sense" (RF, para. 44). In business terms, what happened here is simple. Sierra Brands bought the RipSkirt business and substantially all of its assets, and now controls it. That is what the parties called a Change of Control.

C. RBC agreed to the sharing provision

11. RBC says the distribution provision was "only agreed to by the Debtor and the Subordinated Creditor" (RF, para. 46). RBC signed and accepted the Subordination Agreement as a whole (MR p. 84). In it, the Debtor and Elsasser Holding "agree with the Lender" that a Sale which is also a Change in Control will be treated as one, "including with respect to the distribution of proceeds" (MR p. 79). RBC's own factum describes the provision as "a pro rata sharing of proceeds of the assets of Ripskirt between RBC and Elsasser" (RF, para. 5).

12. RBC's factum also attributes the clause that treats a Sale as a Change in Control to the Note (RF, note 18). That clause is in the Subordination Agreement, which RBC signed (MR pp. 79 and 84). RBC does not dispute that it consented to the Ripskirt Transaction.

D. The PPSA does not override the agreement

13. RBC relies on the order of payment in sections 63 and 64 of the *Personal Property Security Act* (RF, paras. 35-41). Elsasser Holding does not claim a security interest, or any priority over RBC as against anyone else. It claims what RBC agreed with it: how the proceeds of a Change of Control are to be shared between the two of them.

14. The PPSA sets out a default order of payment. Here, RBC accepted an agreement that sets out, step by step, how the proceeds would be divided if RipSkirt were sold (MR pp. 79-80 and 84).

15. RBC's argument would also undo the "Sale" provision, which RBC does not challenge. That provision pays Elsasser Holding ahead of RBC's Operating Loan Facility (MR pp. 79-80). If RBC could not agree to share its recovery with an unsecured creditor, neither provision would have any effect.

E. What each party bargained for

16. RBC says Elsasser Holding knew of the group's financial difficulties when it signed, and should have bargained for express language covering a sale by a receiver (RF, para. 43). Elsasser Holding did bargain for protection. It asked for security, and RBC declined (Transcript of Cole Elsasser, Q. 118, SB p. 39). What it received instead was a pro rata share of the proceeds if RipSkirt were sold.

17. The same point applies to RBC. RBC negotiated the agreement directly with Elsasser Holding and CID Capital (Transcript of Cole Elsasser, Q. 111, SB p. 37). It addressed receivership and enforcement in several places in the same documents, and it made the monthly payments conditional on there being no demand or default (MR p. 79; Elsasser Holding's factum, paras. 36 and 45). If RBC wanted the sharing provision to stop applying in a receivership, it could have said so. It did not.

18. A party that knew the group was under financial strain would expect that protection to matter most if the group could not pay its debts. RBC's reading would remove it in exactly that situation.

F. The 2022 sale

19. RBC says it would be unfair for Elsasser Holding to share in the proceeds when it received about US$27 million in 2022 (RF, paras. 1 and 47). That was the price paid for the RipSkirt business, and US$3.5 million of that price was never paid (Note, s. 8, MR p. 63). RBC signed the Subordination Agreement two years after that sale, with knowledge of it.

20. RBC also relies on its own shortfall (RF, para. 47). RBC financed the 2022 purchase of RipSkirt in part (RF, para. 8). Its team was involved in negotiating the Note and the Subordination Agreement (Transcript of Cole Elsasser, Q. 75, SB p. 26), and it accepted the agreement containing the sharing provision knowing the group's financial position. A sharing provision only matters when there is not enough to pay everyone. RBC's shortfall is the situation the provision was written for, not a reason to set it aside.

G. Remedies under the Note

21. RBC says Elsasser Holding did not invoke the remedies in section 4 of the Note (RF, para. 48). It could not have. The Subordination Agreement prohibits Elsasser Holding from taking any enforcement action, including "demand for payment" or "acceleration of debt", until RBC is paid in full (MR p. 79; SB p. 51). Elsasser Holding honoured that term.

H. The claim is not an afterthought

22. RBC says Elsasser Holding "did not surface" until November 21, 2025, and took no position on the motion to approve the sale (RF, paras. 17 and 49). The order of events is the reverse. Elsasser Holding raised the Change of Control clause with the Receiver on November 21, 2025 (SB p. 189). The Court approved the sale two months later, on January 22, 2026 (MR p. 22).

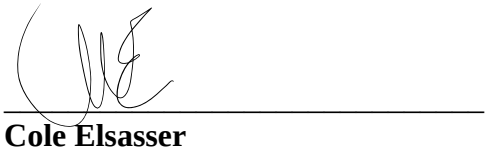
23. Elsasser Holding had no reason to oppose the sale. It wanted the business it founded to find a buyer. Its claim is to a share of the proceeds, which the Receiver has held back pending this motion (MR p. 14).

24. RBC does not oppose Elsasser Holding's request to be represented by its President (RR p. 7). Whether Elsasser Holding retained counsel has no bearing on the meaning of the agreement.

PART III – ORDER REQUESTED

25. Elsasser Holding respectfully requests the order set out in Part IV of its factum dated October 9, 2026.

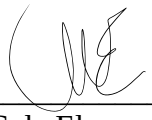
ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of October, 2026.



Cole Elsasser
President, Elsasser Holding Company, Inc.

CERTIFICATE UNDER RULE 4.06.1(2.1)

I, Cole Elsasser, President of Elsasser Holding Company, Inc., certify that I am satisfied as to the authenticity of every authority cited in this factum.



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Cole Elsasser

SCHEDULE "A" – LIST OF AUTHORITIES

No case law is cited. Elsasser Holding relies on the text of the Note and the Subordination Agreement.

SCHEDULE "B" – TEXT OF STATUTES, REGULATIONS AND BY-LAWS

***Personal Property Security Act*, R.S.O. 1990, c. P.10**

Section 63(1)

Upon default under a security agreement, the secured party may dispose of any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to, (a) the reasonable expenses of the secured party, including the cost of insurance and payment of taxes and other charges incurred in retaking, holding, repairing, processing and preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement, any other reasonable expenses incurred by the secured party; and (b) the satisfaction of the obligation secured by the security interest of the party making the disposition, and the surplus, if any, shall be dealt with in accordance with section 64.

Section 64(1)

Where the secured party has dealt with the collateral under section 61 or has disposed of it, the secured party shall account for and, subject to subsection (4), pay over any surplus consecutively to, (a) any person who has a security interest in the collateral that is subordinate to that of the secured party and whose interest, (i) was perfected by possession, the continuance of which was prevented by the secured party who took possession of the collateral, or (ii) was, immediately before the dealing or disposition, perfected by registration; (b) any other person with an interest in the surplus who has delivered a written notice to the secured party of the interest before the distribution of the proceeds; and (c) the debtor or any other person who is known by the secured party to be an owner of the collateral, but the priority of the claim of any person referred to in clauses (a), (b) and (c) against the recipient of the surplus shall not be prejudiced thereby.

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PROCEEDING COMMENCED AT TORONTO

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