ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00742864-00CL **DATE: November 09, 2026**

NO. ON LIST: 4

TITLE OF PROCEEDING: ROYAL BANK OF CANADA v. GIFTCRAFT LTD et al

BEFORE: JUSTICE DUNPHY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Sara-Ann Wilson	Counsel or the Receiver.	Sara.wilson@dentons.com
Pritesh Patel	Receivers, KPMG Inc.	pritpatel@kpmg.ca
Cole Elsasser, Self-Represented.	Elsasser Holding Company	coleelsasser@gmail.com

ENDORSEMENT OF JUSTICE DUNPHY:

[1] This motion by the Receiver arises in the near-final stages of this receivership that began on May 14, 2025 when this Court appointed KPMG Inc. as Receiver over the business of the respondent Giftcraft group of companies. The receiver is seeking directions regarding the application of the proceeds generated upon the sale of the Giftcraft companies approved by this court in January of this year.

[2] The Receiver has been made aware of a claim by Elsasser Holding Company Inc. ("Elsasser Holding") to be entitled to a portion of the sales proceeds by reason of the terms of a subordination agreement between Elsasser Holding and Royal Bank of Canada. Mr. Elsasser wrote to the Receiver on May 9, 2026 requesting that the Receiver make no distributions until the Court determines the rights of Elsasser Holding under the September 24, 2024 Subordination Agreement (the "Subordination Agreement") whereby Elsasser Holding postponed in favour of RBC its claim under a $3.5 million unsecured promissory note from Giftcraft Holdings USA Inc.

Rule 15.01 and standing

[3] When this matter was scheduled for a hearing on July 30, 2026, Mr. Elsasser indicated that Elsasser Holding would be represented by counsel. No request for leave for Mr. Elsasser to represent the company pursuant to Rule 15.01 was sought then. Mr. Elsasser apparently changed his mind about hiring a lawyer and indicated to me that this was due to the expense involved. He filed a factum *for this motion* in early October in which he asked for such leave but took no steps to seek a case conference or motion date to address the matter in advance of the hearing today.

[4] There seems to be a view that it is better to ask for forgiveness than permission. There are cases of urgency where this arguably is so. This is not such a case. Mr. Elsasser made a calculation that it was not worth his while to hire counsel for what he saw as a narrow issue. The distribution he seeks would amount to several hundred thousand dollars were he successful. He is entitled to make that economic calculation, but he is not entitled to presume leave without first asking.

[5] I explained to Mr. Elsasser that one of the reasons the court requires leave applications to be brought in advance is to permit an examination of the issues related to that representation request to ensure that a lay representative is aware of the basic duties owed by counsel to the Court. As well, the Court would normally have a court reporter present had it been aware that there was a self-represented party. During my brief interrogation of Mr. Elsasser, I learned from him that he is only a 10% shareholder of Elsasser Holding while his mother holds 90% of the shares. While he said that he is a director of the corporation, he agreed that there has been no director resolution authorizing him to make a request for leave to represent the corporation. He confirmed that Elsasser Holding has no assets let alone assets in the jurisdiction from which to satisfy any costs award that might be made.

[6] While I have read and taken note of his written submissions by way of a factum (and reply factum) uploaded to Case Center, I did not grant him leave to represent Elsasser Holding at the hearing of this motion. It was presumptuous to proceed as he did. This requirement for leave was not a surprise. He was aware of it and chose to take no proactive steps to address the problem in advance of the hearing.

[7] I did not consider that it would be appropriate to adjourn the hearing at this juncture. The motion was set down for a hearing more than three months ago and this receivership is near the point of being wound up.

Mr. Elsasser had plenty of opportunity to address this issue the right way – he chose to take a shortcut and must live with the consequences.

[8] The interests of justice do not require an adjournment given the delay that would be entailed in the completion of this receivership, the unfairness to other stakeholders and because Mr. Elsasser has filed voluminous written argument setting forth his position.

Subordination Agreement

[9] Turning to the argument advanced by him in writing, I find Mr. Elsasser's position to be entirely without merit. It clearly runs directly contrary to the intent of the Subordination Agreement which it turns on its head subordinating a secured claim with security over all of the debtor companies to his company's own unsecured claim against but one of them. While there are some awkwardly expressed terms in the Subordination Agreement, its meaning is quite unmistakable when read as a whole.

[10] The subject-matter of the Subordination Agreement was an unsecured $3.5 "holdback" amount arising from a sale of the "Ripskirt" business to Giftcraft in 2022. When the note holdback came due in 2024, Giftcraft was unable to pay it. Instead, a $3.5 million unsecured promissory note dated September 2024 was created.

[11] Unsurprisingly, Royal Bank is not a party to the promissory note. However, s. 11 of the promissory note referred to the Subordination Agreement, noting that certain of the holder's rights under the Note were "subordinated to Lender and subject to Lender's rights pursuant to the Subordination Agreement" and that in the event of any conflict or inconsistency "then the provisions of the Subordination Agreement shall have priority over and shall govern to the extent of such conflict".

[12] The Subordination Agreement provides that all present and future obligations of Giftcraft to Elsasser Holding, including under the promissory note, "shall, save as herein provided, be subordinated and postponed in all respects and for all purposes to the payment in full of all present and future, direct or indirect indebtedness, liabilities and obligations" of the Debtor to the Lender. The Subordinated Creditor (Elsasser Holding) agreed that it would not acquire any security to support payment of the promissory note (one of the "Subordinated Liabilities").

[13] The Subordination Agreement included an acknowledgement by Elsasser Holding that the Subordination Agreement "shall not suspend or otherwise affect the present or future rights and remedies of the Lender with respect to the Outstanding Obligations". The Subordination Agreement is governed by the laws of Ontario.

[14] It is suggested that the sale by the receiver as approved by this Court somehow amounted to an event that could alter the scheme of priorities in the Subordination Agreement and place an unsecured creditor of one vendor company over a secured creditor (and other unsecured creditors). The suggestion is an absurd one which is in no way supported by the plain language of the Subordination Agreement.

[15] Unfortunately, the paragraphs of the Subordination Agreement are not numbered. The third paragraph on p. 2 thereof beginning "Notwithstanding any other provisions of this Subordination" cannot possibly be read to have this effect. The entire paragraph details the agreement of the debtor and Elsasser Holding with RBC that NO payments will be made prior to the earlier of the three listed events barring certain on-going payments that were authorized "provided that the Lender has not made demand for repayment of the Outstanding Obligations" or the Debtor is not in default. Default and demand both occurred in 2024. This paragraph is of NO application thereafter apart from certain defined terms.

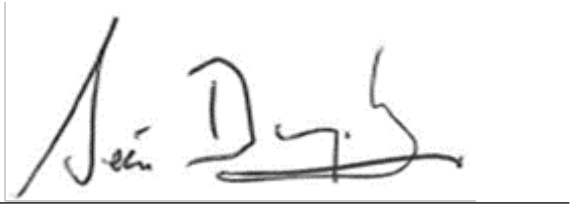
[16] The next two paragraphs (beginning “In the event of a Sale” and “In the event of a Change of Control”) record agreements between “the Debtor and Subordinated Creditor” without reference to RBC. That is for the good and sufficient reason that neither defined term has *any* application after RBC has demanded upon its loan, commenced enforcement proceedings and a Receiver has been appointed.

[17] The Elsasser Holding promissory note is subordinated to the payment of the indebtedness due to RBC. The Subordination Agreement does not and could not purport to bind the Receiver or the Trustee in Bankruptcy of the debtors. The suggestion that a subordination agreement that on its face subordinates an unsecured claim to a secured claim actually does the opposite is absurd.

[18] This is in form a Receiver’s motion for directions. I respond to it with the following direction: The claim of Elsasser Holding to a distribution of a portion of the sale proceeds of the Ripskirt Transaction is denied, and the Receiver is authorized to distribute the proceeds to RBC free and clear of any claim of Elsasser Holding.

[19] RBC seeks its costs of this unnecessary motion. In the circumstances, I think it appropriate to make a costs award against Elsasser Holding *and* Mr. Elsasser personally. While I have considered whether a scale of costs other than partial indemnity is warranted here, I conclude that there is no reason to depart from the partial indemnity scale. The claim was a flimsy one but I cannot infer that it was advanced in bad faith even if it was a long shot on any reasonable view. There are one or two other claims yet to be resolved so I cannot lay further delay in winding up the receivership at Mr. Elsasser’s feet.

[20] Mr. Elsasser and Elsasser holdings shall be jointly and severally liable to pay RBC’s partial indemnity costs which I fix at $31,070 “all inclusive”.



Date: Nov 09, 2026

Sean Dunphy