

**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 FACTUM OF ELSASSER HOLDING COMPANY, INC.

(returnable November 9, 2026)

October 9, 2026

ELSASSER HOLDING COMPANY, INC.

1025 Pine Street
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

CLAIMANT’S FACTUM OF ELSASSER HOLDING COMPANY, INC.

Record references in this factum: **MR** is the Receiver’s Motion Record dated August 14, 2026 (advice and directions). **CR** is the Claimant’s Record of Elsasser Holding served August 28, 2026. **RR** is the Responding Record of Royal Bank of Canada served September 11, 2026. **DMR** is the Receiver’s Motion Record dated August 14, 2026 on its motion for distribution and fee approval, which contains the Receiver’s Fourth Report.

PART I – OVERVIEW

1. Elsasser Holding Company, Inc. (“Elsasser Holding”) sold the RipSkirt business to the Giftcraft group in 2022. US\$3.5 million of the purchase price was held back and was never paid in cash. In September 2024 that unpaid amount was documented in an Unsecured Promissory Note (the “Note”). On the same date, Elsasser Holding and Royal Bank of Canada (“RBC”) signed a Subordination and Postponement Agreement (the “Subordination Agreement”) that sets out, as between the two of them, who is paid what and in what order.
2. The Subordination Agreement subordinates Elsasser Holding to RBC generally, with one negotiated exception that matters here. If there is a “Change of Control”, which is defined to include “the sale or other disposition of all or substantially all of the assets of RipSkirt”, the proceeds are shared pro rata between RBC’s Capital Loan Facility and Elsasser Holding, ahead of RBC’s Operating Loan Facility.
3. RipSkirt has now been sold. On May 4, 2026 the Receiver closed a court-approved sale of substantially all of RipSkirt’s assets to Sierra Brands Group LLC (the “Ripskirt Transaction”). RBC applied for the receivership, supported the sale, and is the party that will otherwise receive the proceeds.
4. Elsasser Holding has kept its side of the agreement throughout. It accepted a note in place of cash it was owed, agreed to rank behind RBC, took no enforcement steps, and waited. It now asks for what the agreement provides when RipSkirt is sold.
5. RBC says the provision does not apply because the sale was “involuntary”. The agreement contains no such limit. Elsasser Holding does not ask for a novel or expansive reading, only

that the agreement be applied as written. The Receiver estimates the maximum value of the claim at approximately US\$0.3 million, or about 12% of sale proceeds of approximately US\$2.4 million (Fourth Report of the Receiver dated August 14, 2026 (“Fourth Report”), para. 36, DMR p. 36).

PART II – FACTS

A. The parties

6. Elsasser Holding is an Oregon corporation. It founded the business of RipSkirt Hawaii, LLC (“RipSkirt”) and owned it until 2022. Cole Elsasser is an officer of Elsasser Holding (Affidavit of Cole Elsasser affirmed August 28, 2026 (“Elsasser Affidavit”), paras. 1 and 4, CR pp. 1-2).
7. RBC, as successor to HSBC Bank Canada, is the senior secured lender to the Giftcraft group. At the Receiver’s appointment the Debtors owed RBC approximately CA\$49.7 million, and RBC expects a significant shortfall (Notice of Motion, paras. 4-5, MR p. 12).

B. The 2022 sale and the unpaid holdback

8. Elsasser Holding sold RipSkirt to the Giftcraft group under a Unit Purchase and Contribution Agreement dated September 16, 2022 (the “Purchase Agreement”). Part of the price, the US\$3.5 million “Indemnity Holdback Amount” under section 1.04(b), was payable later (Note, s. 8, CR p. 9; MR p. 63).
9. The Indemnity Holdback Amount was not paid in cash when it came due. Elsasser Holding chose to resolve the shortfall through a negotiated note rather than pursue a claim against the purchaser (Elsasser Affidavit, para. 5, CR p. 2).

C. The Note

10. Giftcraft Holdings USA Inc. issued the Note to Elsasser Holding in the principal amount of US\$3,500,000. The Note states that it is issued “in full and complete satisfaction of the payment obligation of Maker to Holder of the Indemnity Holdback Amount” (Note, s. 8). The Note is therefore unpaid purchase price for the RipSkirt business.

11. The Note bears interest at 5% per year from March 29, 2024, and 8% after an Event of Default (Note, s. 1(a), MR p. 61).
12. Section 1(b)(iii) of the Note makes the entire principal and all accrued interest payable “upon a Change of Control”. Section 1(b) defines that term (MR pp. 61-62):

“Change of Control” means (x) the sale or other disposition of all or substantially all of the assets of RipSkirt Hawaii, LLC, an Oregon limited liability company (“RipSkirt”), (y) any merger, consolidation, equity exchange or other combination of RipSkirt with, by, or into any other Person, whether or not RipSkirt is the surviving entity, which results in Giftcraft Holdings, Inc. ceasing to own, directly or indirectly, beneficially or of record all or substantially all of the economic and voting equity interests of the surviving entity after the consummation of such transaction, or (z) Giftcraft Holdings, Inc. ceasing to own, directly or indirectly, beneficially and of record all or substantially all of the economic and voting equity interests of Ripskirt.
13. The Note separately addresses receivership. Under section 3(b), the appointment of a receiver for the Maker or a substantial part of its property is an Event of Default (MR p. 62).

D. The Subordination Agreement

14. The Subordination Agreement is dated September 24, 2024. It was signed by Elsasser Holding and by RBC, and was acknowledged by each Giftcraft entity, including RipSkirt (CR pp. 15-23; MR pp. 78-86). It is governed by Ontario law (MR p. 82).
15. *General subordination, subject to exceptions.* The Subordinated Liabilities are subordinated to RBC’s Outstanding Obligations “save as herein provided” (MR p. 78), and RBC’s priority applies “except as expressly permitted herein” (MR p. 79).
16. *Enforcement standstill.* Elsasser Holding may not take enforcement action, including seeking the appointment of a receiver, until after the Release Date (MR p. 79).
17. *Payment timing.* No payment may be made to Elsasser Holding “until the earlier of” three events (MR p. 79):

(a) the date on which any of the Borrowers or Guarantors under either Facility Letter enters into a sale transaction for all or substantially of its assets and/or equity, provided that the Lender has provided its prior consent

to such sale (a “Sale”). To the extent the transaction contemplated by the Sale also constitutes a Change in Control (as defined in the Note), the Sale shall be treated as a Change in Control for the purpose of this Agreement, including with respect to the distribution of proceeds resulting therefrom as set forth below;

(a) the date on which a Change in Control (as defined in the Note) occurs, provided that the Lender has provided its prior consent to such Change of Control, subject to the terms and conditions set out herein, or

(b) the Release Date,

18. *Monthly payments.* The agreement also permits certain monthly payments, but only “provided that the Lender has not made demand for repayment of the Outstanding Obligations and that the Debtor is not in default or breach of the terms and conditions of the Facility Letters” (MR p. 79).

19. *Two distribution provisions.* The agreement then sets out how proceeds are paid in each case (MR pp. 79-80). In the event of a Sale, RBC’s Capital Loan Facility is paid first, Elsasser Holding second, and RBC’s Operating Loan Facility third. In the event of a Change of Control:

the Debtor and Subordinated Creditor agree that the proceeds resulting from such Change of Control shall be paid as follows:

(a) firstly, on a pro-rata basis, to the Lender, to be applied as permanent repayment of outstanding amounts under the Capital Loan Facility Letter, and to the Subordinated Creditor, to be applied as permanent repayment of the Subordinated Liabilities; and

(b) secondly, to the Lender to be applied as partial repayment of any outstanding amounts under the Operating Loan Facility Letter.

20. *Insolvency.* The agreement expressly contemplates proceedings under the *Bankruptcy and Insolvency Act* and similar legislation. It provides that any payment or distribution received in such proceedings “shall be subject to the provisions of this Subordination” (MR p. 81).

E. The receivership and the sale of RipSkirt

21. On RBC’s application, KPMG Inc. was appointed Receiver of the Debtors, including RipSkirt, on May 14, 2025 (Third Report, para. 1, MR p. 21).

22. On January 18, 2026 the Receiver entered into an Asset Purchase Agreement with Sierra Brands Group LLC for “all or substantially all of the assets of Ripskirt used in relation to the Purchased Business” (Second Report of the Receiver dated January 19, 2026 (“Second Report”), para. 34(g), RR p. 38).
23. In recommending approval, the Receiver reported that “RBC, which is expected to suffer a loss on its secured advances to the Debtors, supports the Ripskirt Transaction” (Second Report, para. 66(e), RR p. 49).
24. The Court granted the Approval and Vesting Order on January 22, 2026, approving the transaction “for the sale of substantially all of the assets of Ripskirt”. The transaction closed on May 4, 2026 (Third Report, para. 6, MR p. 22; Notice of Motion, para. 7, MR p. 12).
25. The Receiver has not distributed the Ripskirt sale proceeds pending the determination of this claim (Notice of Motion, para. 17, MR p. 14).

F. The positions of the parties

26. The Receiver reports that the Subordination Agreement contemplates pro rata sharing between RBC’s Capital Loan Facilities (approximately US\$30 million) and Elsasser Holding’s subordinated debt (approximately US\$3.5 million) in certain circumstances (Third Report, para. 22, MR p. 25).
27. RBC advances two arguments. First, that “Sale” and “Change of Control” contemplate only a voluntary transaction by the Debtors, and not a court-supervised sale by a receiver. Second, that the Receiver’s appointment was an Event of Default that made the Note due at a time when it was fully subordinated, and that the later sale did not change that (Third Report, paras. 24-26, MR p. 26).

PART III – ISSUES AND LAW

28. There are three questions. Should Elsasser Holding be allowed to speak for itself through its President? Is the sale of RipSkirt a “Change of Control” under the agreement? If so, how are the proceeds shared?

A. Leave under Rule 15.01(2)

29. A corporation must be represented by a lawyer “except with leave of the court” (*Rules of Civil Procedure*, r. 15.01(2)). Elsasser Holding asks for leave to be represented by Cole Elsasser. He is an officer of Elsasser Holding and signed the Subordination Agreement on its behalf (CR p. 20; MR p. 83). Elsasser Holding has not retained Canadian counsel, and its United States counsel is not in a position to represent it before this Court (Elsasser Affidavit, para. 18, CR p. 5). The amount in issue is modest relative to the cost of Ontario counsel, and the question is a narrow one about the meaning of a short agreement.
30. RBC does not oppose leave (Affidavit of Nick Hollard sworn September 11, 2026 (“Hollard Affidavit”), para. 21, RR p. 7; letter from Borden Ladner Gervais LLP dated August 19, 2026, RR p. 109).

B. The agreement should be applied as written

31. Elsasser Holding asks only that the Subordination Agreement be applied according to the ordinary meaning of its words, read together with the rest of the document. The agreement is governed by Ontario law (MR p. 82). The parties were sophisticated and chose their words with care.

C. The sale of RipSkirt is a “Change of Control”

32. *The words are met.* A Change of Control includes “the sale or other disposition of all or substantially all of the assets of RipSkirt”. The Court approved a transaction “for the sale of substantially all of the assets of Ripskirt” (Third Report, para. 6, MR p. 22). The definition and the transaction match.
33. *There is no voluntariness requirement.* RBC’s argument depends on adding a word, “voluntary”, that does not appear in the definition. The definition also extends beyond a “sale” to any “other disposition”. Those are broad words. They leave no room for an unstated exception based on the reason for the sale. RBC’s own evidence is also that, under a Forbearance Agreement dated March 20, 2025, “each Obligor irrevocably consents to the appointment of a receiver” (Affidavit of Andrew O’Coin dated May 8, 2025 (“O’Coin

Affidavit”), paras. 43 and 48, RR pp. 17-19). The receivership that led to this sale had been agreed to in advance.

34. *The definition does not depend on who sells.* It describes an event: the sale or disposition of RipSkirt’s assets. It does not say “by RipSkirt” or “by the Maker”. The Subordination Agreement is equally neutral. It applies on “the date on which a Change in Control (as defined in the Note) occurs” (MR p. 79).
35. *The parties knew how to name a seller when they meant to.* The other trigger in the same clause, a “Sale”, applies when a Borrower or Guarantor “enters into a sale transaction” (MR p. 79). That wording points to a particular party. The Change of Control wording does not.
36. *Receivership was not overlooked.* The two documents deal with receivership and insolvency in four places:
 - (a) the Note makes the appointment of a receiver an Event of Default (Note, s. 3(b), MR p. 62);
 - (b) the Subordination Agreement bars Elsasser Holding from seeking a receiver (MR p. 79);
 - (c) it confirms that RBC may “sell, exchange, release, surrender, realize upon, enforce or otherwise deal with” its collateral (MR p. 81); and
 - (d) it provides that distributions in proceedings under the *Bankruptcy and Insolvency Act* remain “subject to the provisions of this Subordination” (MR p. 81).
37. Parties who addressed receivership in four places could easily have excluded a receiver’s sale from the definition of Change of Control. They did not.
38. *The agreement continues to apply in insolvency.* Distributions in insolvency proceedings are “subject to the provisions of this Subordination” (MR p. 81). That means all of its provisions, including the one that shares the proceeds of a Change of Control.
39. *The transaction is also a “Sale”, with the same result.* RipSkirt guaranteed the obligations owed to RBC under the Facility Letters (O’Coin Affidavit, para. 25, RR p. 14). The

Receiver's sale of substantially all of its assets is therefore also a "Sale". Where a Sale "also constitutes a Change in Control", it "shall be treated as a Change in Control for the purpose of this Agreement, including with respect to the distribution of proceeds" (MR p. 79).

40. *This is what the agreement was for.* The Note is the unpaid balance of the price for RipSkirt itself. Elsasser Holding accepted it in place of cash, agreed to rank behind RBC, and agreed not to enforce. In return it received one protection: a pro rata share of the proceeds if RipSkirt were sold. RipSkirt has been sold. Elsasser Holding has kept every commitment it made, and asks that this one be kept in return.
41. *RBC's reading would remove that protection when it matters.* An agreement about the order of payment matters most when there is not enough to pay everyone. On RBC's reading, the sharing provision would apply if the group were healthy enough to sell RipSkirt itself, and would disappear on enforcement. Nothing in the agreement says so.

D. RBC's two objections

42. *RBC consented to the sale.* The payment clause refers to a Change in Control to which "the Lender has provided its prior consent" (MR p. 79). RBC applied for the receivership. Before the Court approved the sale, the Receiver reported that RBC "supports the Ripskirt Transaction" (Second Report, para. 66(e), RR p. 49). A lender that supports the sale of its collateral, in a proceeding it started, has consented to that sale.
43. *No written consent is required.* Where the parties wanted consent in writing, they said so. The agreement requires RBC's "prior written consent" in three other places: twice for the taking of security (MR p. 78) and once for amendments to the Note (MR p. 80). The payment clause requires only "prior consent".
44. *The Event of Default does not change the order of payment.* The Receiver reports RBC's second argument: the Receiver's appointment was an Event of Default that made the Note due while it was fully subordinated, so the later sale changed nothing (Third Report, para. 25, MR p. 26). That argument answers a different question. When the Note falls due is a matter under the Note. The order in which the proceeds of RipSkirt are paid is a matter under the Subordination Agreement.

45. Nothing in the Change of Control provision makes it conditional on the absence of a default. In the same agreement, the right to monthly payments is expressly conditional: it applies only if RBC “has not made demand” and “the Debtor is not in default” (MR p. 79). The parties switched off the monthly payments on default. They did not switch off the sharing of proceeds on a sale.

E. The proceeds to be shared

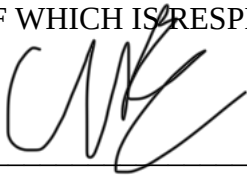
46. The Change of Control provision applies to “the proceeds resulting from such Change of Control”. Elsasser Holding’s share is its pro rata portion, calculated on the amount outstanding under the Capital Loan Facility Letter and the amount of the Subordinated Liabilities, being the US\$3.5 million principal of the Note plus accrued interest. RBC’s evidence is that the principal now outstanding under the three Capital Loans totals approximately US\$21.6 million (Hollard Affidavit, para. 8, RR pp. 4-5).
47. The Receiver has assumed that the calculation would be made on net rather than gross proceeds (Fourth Report, para. 36, note 2, DMR p. 36). The agreement refers to “proceeds”, not “net proceeds”. Elsasser Holding accepts that amounts ranking ahead of both RBC and Elsasser Holding by order of this Court must be paid first. It submits that any other deduction should be limited to costs directly attributable to the Ripskirt Transaction, and should not include the general costs of the receivership or of realizing on the Giftcraft business.
48. Elsasser Holding asks that the Receiver be directed to calculate the pro rata share on that basis and report the calculation to the parties, with leave to return to the Court if the amount cannot be agreed.
49. *Alternative position.* If the Court finds that the Ripskirt Transaction is a “Sale” but not a “Change of Control”, the Sale provision applies and Elsasser Holding ranks second, after the Capital Loan Facility and ahead of the Operating Loan Facility (MR pp. 79-80).

PART IV – ORDER REQUESTED

50. Elsasser Holding respectfully requests an order:

- (a) granting leave under Rule 15.01(2) for Elsasser Holding to be represented on this motion by its President, Cole Elsasser;
- (b) declaring that the Ripskirt Transaction is a “Change of Control” within the meaning of the Note and the Subordination Agreement;
- (c) declaring that the proceeds of the Ripskirt Transaction are to be distributed in accordance with the Change of Control provision of the Subordination Agreement, on a pro rata basis between RBC, on account of the Capital Loan Facility Letter, and Elsasser Holding, on account of the Subordinated Liabilities;
- (d) directing the Receiver to calculate Elsasser Holding’s pro rata share, to report that calculation to RBC and Elsasser Holding, and to pay that share to Elsasser Holding, with leave to any party to seek further directions if the amount cannot be agreed;
- (e) directing the Receiver to hold back from any distribution to RBC an amount sufficient to satisfy Elsasser Holding’s share until it is paid;
- (f) in the alternative, declaring that the Ripskirt Transaction is a “Sale” and that its proceeds are to be distributed in accordance with the Sale provision of the Subordination Agreement; and
- (g) such further and other relief as this Honourable Court considers just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th 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.

A handwritten signature in black ink, appearing to be 'CE', is written above a horizontal line.

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

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Rule 15.01(2)

A party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the court.

Rule 4.06.1(2.1)

A factum shall include a statement signed by the party’s lawyer, or on the lawyer’s behalf by someone the lawyer has specifically authorized, certifying that the person signing the statement is satisfied as to the authenticity of every authority cited in the factum.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO
CLAIMANT'S FACTUM OF ELSASSER HOLDING COMPANY, INC.
(returnable November 9, 2026)

Cole Elsasser
President, Elsasser Holding Company, Inc.
1025 Pine Street, Hood River, Oregon 97031
coleelsasser@gmail.com

Self-represented officer of Elsasser Holding Company, Inc.