

Court file number: Court of King's Bench of Alberta	1703-21274
Judicial Centre	Edmonton
Plaintiff	Royal Bank of Canada
Defendants	Reid-Built Homes Ltd., 1679775 Alberta Ltd., Reid Worldwide Corporation, Builder's Direct Supply Ltd., Reid Built Homes Calgary Ltd., Reid Investments Ltd., Reid Capital Corp., and Emilie Reid
Document	Brief of Law (Attorney General of Canada)
Address for service and contact information of party filing this document	Department of Justice Canada 300 EPCOR Tower, 10423 – 101 Street NW Edmonton AB T5H 0E7 Counsel: George F. Bódy Tel: 780-495-7595 Fax: 780-495-3319 Email: GEORGE.BODY@JUSTICE.GC.CA

1. The Attorney General of Canada applies for an order compelling Alvarez & Marsal Canada Inc., as the court-appointed receiver of 1679775 Alberta Ltd., Reid-Built Homes Ltd., Reid Worldwide Corporation, and Builders Direct Supply Ltd., to pay to the Receiver General \$772,367.28 to the Receiver General forthwith, allocated as follows:
  - (a) \$193,343.42 with respect to 1679775 Alberta Ltd.,
  - (b) \$555,105.69 with respect to Reid-Built Homes Ltd.,
  - (c) \$4,495.27 with respect to Builders Direct Supply Ltd., and
  - (d) \$19,422.90 with respect to Reid Worldwide Corporationto be applied to each corporations' liability to the Minister on their respective GST accounts.

2. On November 2, 2017, Alvarez and Marsal Canada Inc. (“**A&M**”) was appointed receiver of Reid-Built Homes Ltd., 1679775 Alberta Ltd., Reid Worldwide Corporation, Builder's Direct Supply Ltd., Reid Built Homes Calgary Ltd., Reid Investments Ltd., Reid Capital Corp. by order of Mr. Justice Hillier. For ease of reference, the *Consent Receivership Order* is attached as Exhibit “A” to the affidavit of CRA officer Doraine Awid, filed in this application.
3. In 2018, CRA remitted its claims to the Receiver in respect of the GST liability of the four corporations. Despite follow-up requests for payment in August 2018 and January 2019, the Receiver has not remitted payment.
4. In its Nineteenth Report to the Court dated September 20, 2021, the Receiver reported that between November 2, 2017 and September 10, 2021, it liquidated most of the assets of the Reid group of companies, realized \$131,885,000, disbursed \$131,041,000, and had \$843,000 in cash remaining.
5. In September 2022, CRA's lawyer contacted the Receiver's lawyer to inquire about payment of the GST claim against 1679775 Alberta Ltd. On October 5, 2022, the Receiver's lawyer responded that the companies would be making assignments in bankruptcy and CRA's GST claims would be addressed in the bankruptcies.
6. This is unacceptable to CRA.
7. Outside of bankruptcy, the Minister's claim for GST is protected by [section 222](#) of the *Excise Tax Act*:

**Trust for amounts collected**

222 (1) Subject to subsection (1.1), every person who collects an amount as or on account of tax under Division II is deemed, for all purposes and despite any security interest in the amount, to hold the amount in trust for Her Majesty in right of Canada, separate and apart from the property of the person and from property held by any secured creditor of the person that, but for a security interest, would be property of the person, until the amount is remitted to the Receiver General or withdrawn under subsection (2).

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### **Amounts collected before bankruptcy**

(1.1) Subsection (1) does not apply, at or after the time a person becomes a bankrupt (within the meaning of the *Bankruptcy and Insolvency Act*), to any amounts that, before that time, were collected or became collectible by the person as or on account of tax under Division II.

### **Withdrawal from trust**

(2) A person who holds tax or amounts in trust by reason of subsection (1) may withdraw from the aggregate of the moneys so held in trust

(a) the amount of any input tax credit claimed by the person in a return under this Division filed by the person in respect of a reporting period of the person, and

(b) any amount that may be deducted by the person in determining the net tax of the person for a reporting period of the person,

as and when the return under this Division for the reporting period in which the input tax credit is claimed or the deduction is made is filed with the Minister.

### **Extension of trust**

(3) Despite any other provision of this Act (except subsection (4)), any other enactment of Canada (except the *Bankruptcy and Insolvency Act*), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed

(a) to be held, from the time the amount was collected by the person, in trust for Her Majesty, separate and apart from the property of the person, whether or not the property is subject to a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was collected, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to a security interest

and is property beneficially owned by Her Majesty in right of Canada despite any security interest in the property or in the proceeds thereof and the proceeds of the property shall be paid to the Receiver General in priority to all security interests.

### **Meaning of security interest**

(4) For the purposes of subsections (1) and (3), a security interest does not include a prescribed security interest.

8. The operative provisions in this situation are subsections 222(3) and 222(1.1).

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9. ETA ss. 222(1) creates a trust for GST collected by a person providing goods or services. The GST<sup>1</sup> is to be remitted on prescribed basis (e.g., twice a month or monthly, depending on the size of the business). If a person fails to remit the GST as and when required, the extension of trust provision in ETA ss. 222(3) is triggered. It provides that property of the debtor, equal in value to the outstanding GST, is deemed to be held in trust for His Majesty and the proceeds of the property shall be paid to the Receiver General in priority to all security interests.
  
  10. The situation changes after the debtor company becomes a bankrupt. ETA ss. 222(1.1) provides:

222(1.1) Subsection (1) does not apply, at or after the time a person becomes a bankrupt (within the meaning of the *Bankruptcy and Insolvency Act*), to any amounts that, before that time, were collected or became collectible by the person as or on account of tax under Division II.
  
  11. [Section 2](#) of the BIA defines “bankrupt” to mean a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person.
  
  12. Thus, in a receivership under the BIA, a debtor is not a “bankrupt” and ETA ss. 222(3) continues to be effective. A receiver appointed by the Court is under a statutory obligation to apply all legislation applicable to its mandate and to do so as impartially as the Court itself.
  
  13. The four Reid companies in issue in this application - 1679775 Alberta Ltd., Reid-Built Homes Ltd., Reid Worldwide Corporation, and Builders Direct Supply Ltd. – were liable to the Minister for GST they collected but failed to remit before November 2, 2017.
  
  14. The Court’s [Consent Receivership Order](#) issued November 2, 2017 stayed all creditors, including the Minister, from taking steps to collect the debts owed to them by the Reid group of companies. This “consolidation” approach is adopted to treat all creditors’ claims in accordance with the law and to prevent the “race” amongst creditors to get what they

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<sup>1</sup> ETA ss. 222(2) allows a person to remit the net GST for a period – that is to set off GST it has paid for the period for which it is entitled to an *Input Tax Credit* against the GST it collected for that period.

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can from the debtor's property. Creditors must have confidence in the impartiality of the Court and its receiver for this process to function.

15. In March 2018 and June 2018, CRA submitted its claims to the Receiver. CRA was not paid. In August 2018, CRA sent follow-up letters requesting payment. CRA was not paid. In January 2019, CRA sent further follow-up requesting payment. Despite the Receiver realizing nearly \$132 million in proceeds from the sale of the assets of the various Reid group of companies, and distributing over \$131 million of that to various secured creditors of the Reid companies – including \$3.2 million for its own fees and expenses – and having (as of September 10, 2021) \$843,000 cash remaining, CRA has not been paid.
16. In response to the CRA's request for payment in September, the Receiver's response was that the companies will soon be making assignments in bankruptcy.
17. The companies themselves would not make assignments in bankruptcy. The directors of those companies were stripped of all authority to do so by the November 2 2017 Receivership Order, which order authorized the Receiver to assign the companies into bankruptcy (paragraph 3(r)).<sup>2</sup>
18. A unilateral move by the Receiver would trigger ETA ss. 222(1.1) and collapse CRA's \$772,367.28 deemed trust claims, to the detriment of CRA. There is no good reason for the Receiver to do so. Assuming the Receiver still has \$843,000 cash, it has sufficient funds to pay CRA's GST deemed trust claims totaling \$772,367.
19. Rules of statutory construction applicable to all federal statutes, including the ETA, are set out in sections 10 to 12 of the federal *Interpretation Act*, RSC 1985 c. I-21:

### **Law always speaking**

10 The law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning.

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<sup>2</sup> Paragraph 3 of the November 2, 2017 Consent Receivership Order concludes, "and in each case where the Receiver takes any such actions or steps, it shall be exclusive authorized and empowered to do so, to the exclusion of all other Persons (as defined below) including the Debtor, and without interference from any other Person."

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### **Imperative and Permissive Construction**

“Shall” and “may”

11 The expression “shall” is to be construed as imperative and the expression “may” as permissive.

### **Enactments Remedial**

Enactments deemed remedial

12 Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

20. Applying these rules of construction, sections 10 and 11 mandate the Receiver's immediate compliance with ETA ss. 222(3) – that the proceeds of sale shall be paid to the Receiver General. Section 12 informs the interpretation of ETA ss. 222(3). The object of ETA ss. 222(3) is to recover GST collected by a person but not remitted to the Receiver General.
21. It is important to remember that GST was never the property of the debtors or formed part of the estate of the debtor. It is a value-added tax that purchasers pay to vendors who hold that money in trust for the Crown. For example, if a person goes to a hardware store to purchase a ladder for \$100, the purchaser must pay \$100 to the vendor as consideration for the ladder, and pay an additional \$5 on account of GST. ETA ss. 222(1) creates a trust for the original GST collected and ETA ss. 222(3) is a remedial provision to address the breach of trust by misappropriation of the Crown's money by the debtor. Allowing the Receiver to withhold payment of the Crown's claim (i.e., ignore the mandatory “shall be paid” language of ETA ss. 222(3)) until other creditors have been paid and then assigning the debtor into bankruptcy to eliminate the Crown's property claim does not give ETA ss. 222(3) the fair, large, and liberal interpretation that would best ensure the attainment of the object of that provision.

### **Conclusion**

22. The Crown seeks an order directing the Receiver to pay the Crown's GST claims of \$772,367.28 to the Receiver General forthwith, allocated as follows:
  - (a) \$193,343,42 with respect to 1679775 Alberta Ltd.,

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(b) \$555,105.69 with respect to Reid-Built Homes Ltd.,

(c) \$4,495.27 with respect to Builders Direct Supply Ltd., and

(d) \$19,422.90 with respect to Reid Worldwide Corporation

to be applied to each corporations' liability to the Minister on their respective GST accounts.

**Annuling bankruptcy assignment (if necessary)**

23. As of Friday October 21, 2022, none of the four companies were bankrupt.<sup>3</sup> In the event the Receiver has assigned these companies into bankruptcy since October 21<sup>st</sup>, presumably in response to this application for payment, the Crown submits the Court should annul such assignment pursuant to subsection 181(1) of the *Bankruptcy and Insolvency Act*:

**Power of court to annul bankruptcy**

181 (1) If, in the opinion of the court, a bankruptcy order ought not to have been made or an assignment ought not to have been filed, the court may by order annul the bankruptcy.

24. This issue will be addressed in oral argument to the court if and only if the Receiver assigns the debtor companies into bankruptcy.

All of which is respectfully submitted.

Dated at Edmonton Alberta this 25<sup>th</sup> day of October 2022.

Attorney General of Canada



Per: George F. Bódy  
Senior Counsel, Department of Justice Canada

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<sup>3</sup> Affidavit of Doraine Awid sworn October 25, 2022, Exhibits G, H, I, and J.