

C A N A D A

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
LOCALITY OF MONTREAL

(Commercial Division)
Bankruptcy and Insolvency Act

No: 500-11-

**IN THE MATTER OF THE PROPOSED
RECEIVERSHIP OF:**

FERMETCO INC., a legal person, having an address at 100-1300 55th Avenue, in the city of Lachine, district of Montreal, province of Quebec, H8T 3J8

Debtor/Respondent

-and-

ROYAL BANK OF CANADA, a legal person, having its principal establishment at 1, Place Ville-Marie, in the city and district of Montreal, province of Quebec, H3B 3Y1

Petitioner

-and-

ERNST & YOUNG INC., a legal person, having its principal establishment at 2300-900 Blvd. De Maisonneuve West, in the city and district of Montreal, province of Quebec, H3A 0A8

Proposed Receiver

<p>MOTION TO APPOINT A RECEIVER (SECTION 243 AND SEQ. OF THE <i>BANKRUPTCY AND INSOLVENCY ACT</i>)</p>

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF THE COMMERCIAL DIVISION IN AND FOR THE DISTRICT OF MONTREAL, OR TO THE REGISTRAR OF THE COURT, THE PETITIONER HEREBY RESPECTFULLY SUBMITS:

I. SCOPE AND PURPOSE

1. Royal Bank of Canada (the "**Bank**") seeks the issuance of an order appointing Ernst & Young Inc. (Mr. Martin Rosenthal) as receiver (the "**Receiver**") to the

assets secured in favour of the Bank, namely the universality of the movable property of Fermetco Inc. (“**Fermetco**” or the “**Debtor**”) pursuant to sections 243 and *seq.* of the *Bankruptcy and Insolvency Act* (the “**BIA**”) with the powers over Fermetco’s assets provided for in the draft Receivership Order communicated herewith as **Exhibit P-1**.

2. A comparative version showing the proposed changes between the model order provided by the Barreau de Montréal and the proposed order (Exhibit P-1) is communicated herewith as **Exhibit P-2**.

II. THE PARTIES

3. The Bank is a Canadian chartered bank duly constituted and having a place of business at 1, Place Ville-Marie, in the city and district of Montreal , in the city of Montréal, province of Québec.
4. Fermetco operates in the wholesale of electric mobility products, such as “e-bikes”, particularly under the “iGO” brand. Gary Richman is Fermetco’s sole director and officer, as appears more fully from Fermetco’s entry in the *Registre des entreprises du Québec*, communicated herewith as **Exhibit P-3**.
5. HSBC Bank Canada (“**HSBC**”) was Fermetco’s operating lender.
6. On March 28th, 2024, the Bank closed the acquisition of HSBC and, as a result thereof, all rights and obligations of HSBC under the loan and security documents between HSBC and Fermetco (as more amply described herein) have been assigned to the Bank. A name change to this effect was registered on the *Register of Personal and Movable Real Rights* (the “**RPMRR**”) on May 1st, 2024 under number 24-0518295-0001, as appears more fully from this registration, communicated herewith as **Exhibit P-4**. For ease of reference in this motion, references to “HSBC” for dealings prior to March 28th, 2024 shall be described as dealings with the “Bank”.

III. CREDIT FACILITIES

7. On December 1st, 2021, the Bank issued a facility letter to Fermetco providing for credit facilities necessary to finance the operations of Fermetco, which facility letter was accepted by Fermetco, as borrower, and by Gary Richman, as personal guarantor, on December 2nd, 2021, the whole as appears more fully from a copy of the facility letter (as amended and restated from time to time, including namely pursuant to the amended and restated facility letter dated December 1st, 2022 as well as the amendment thereto dated August 2nd, 2023, the “**Facility Letter**”), communicated herewith *en liasse* as **Exhibit P-5**.

IV. SECURITY GRANTED TO THE BANK BY FERMETCO

8. In order to secure all of its obligations towards the Bank, present and future, direct or indirect, including those arising from the Facility Letter, Fermetco granted in

favour of the Bank, *inter alia*, the following hypothecs (collectively, the “**Hypothecs**”):

- a) A movable hypothec in the amount of \$25,000,000, charging the universality of all present and future movable property of Fermetco (the “**Hypothecated Property**”), dated December 3rd, 2021 (the “**2021 Hypothec**”), as appears more fully from this deed of hypothec, communicated as **Exhibit P-6**;
 - b) a movable hypothec in the amount of \$50,000,000, charging the Hypothecated Property, dated December 2nd, 2022 (the “**2022 Hypothec**”), as appears more fully from this deed of hypothec, communicated as **Exhibit P-7**;
9. The Hypothecs were both registered at the RPMRR. More specifically, the 2021 Hypothec was registered on December 6th, 2022, under number 21-1320145-0001 and the 2022 Hypothec was registered at the RPMRR on December 5th, 2022, under number 22-1346010-0004, as appears more fully from the RPMRR search results for Fermetco, communicated herewith as **Exhibit P-8**.
 10. Gary Richman (the “**Guarantor**”) has also provided a guarantee to the Bank for all debts and liabilities of Fermetco towards the Bank, up to a maximum amount of \$1,000,000;
 11. Considering that Fermetco also has operations outside of Quebec, on July 18, 2017, Fermetco also granted to the Bank a security interest charging all its personal property pursuant to a Canadian and American general security agreement (each a “**GSA**” and collectively, the “**GSAs**”). The Canadian GSA was registered under the Ontario and BC PPSAs in Ontario and BC respectively, and the American GSA was registered in the United States of America under the UCC in Illinois, New York and Delaware, as more fully appears from a copy of the GSAs and their respective registration under the Ontario and BC PPSA and the UCC communicated herewith, *en liasse*, as **Exhibit P-9**.

V. TOTAL INDEBTEDNESS

12. As of November 4th, 2024, Fermetco was indebted towards the Bank pursuant to the Facility Letter in an aggregate amount of \$14,604,369.26 (i.e. \$5,185,214,86 USD, equal to \$7,207,708 CAD as at November 4th, 2024, plus \$7,396,661.26 CAD) plus interest accrued and accruing thereof, as well as fees, costs and adjustments when determined by the Bank (the “**Indebtedness**”), the whole as more fully appears from the Bank’s statement of account dated November 4th, 2024, communicated herewith as **Exhibit P-10**.

VI. DEFAULT NOTICES

13. Fermetco has been in default under the Facility Letter since at least June 2023, at which point the Bank had begun informing Fermetco of its various defaults. Such defaults included, namely:

- a) Fermetco's failure to repay certain the Pre-Shipment Buyer Loan Facility and Post-Shipment Buyer Loan Facility (as defined in the Facility Letter) within the prescribed payment requirements in the Facility Letter; and
 - b) The breach of its margin requirements since the period ending on December 31, 2022;
14. In such a context, the Bank had confirmed to Fermetco that it accepted to tolerate such defaults, without waiving the defaults, for the time being and that it was actively monitoring Fermetco's precarious financial position.
 15. On March 18, 2024, the Bank mandated Ernst & Young Inc. (Mr. Martin Rosenthal) ("**EY**") to act as its financial advisor, with Fermetco accepting such mandate.
 16. On or around September 30, 2024, and as required by the Facility Letter, Fermetco signed and issued its compliance certificate for the reporting period ended July 31, 2024 (the "**Compliance Certificate**"), as appears more fully from this compliance certificate, communicated herewith *en liasse* as **Exhibit P-11**.
 17. The Compliance Certificate discloses numerous serious defaults under the Facility Letter, which defaults included, namely, a huge margin deficit of \$6,892,862 and a tangible net worth (TNW) ratio of negative \$4,769,501, whereas the Debtor undertook in the Facility Letter not to allow its TNW to be less than \$5,000,000 at any time
 18. As such, on or around October 9, 2024, and following its review of the financial position of Fermetco with its financial advisor, the Bank served on Fermetco and the Guarantor:
 - a) a notice of default, listing the defaults described in the Compliance Certificate and, as a result of such defaults, requesting payment of the Indebtedness in full by October 21, 2024 at 5:00 P.M (the "**Default Notice**"), communicated herewith as **Exhibit P-12**; and
 - b) a 20-day prior notice with respect to the Hypothecated Property, the whole pursuant to the CCQ and the Section 244 of BIA (the "**Prior Notice**"), communicated herewith as **Exhibit P-13**.
 19. The Default Notice and the Prior Notice were served on Fermetco and the Guarantor on October 11, 2024, and the Prior Notice was registered on the same day under numbers 24-1291534-0001 and 24-1291534-0002, as appears from the proofs of service and *État certifié* for each registration, communicated herewith *en liasse* as **Exhibit P-14**.
 20. Following service of the Default Notice and the Prior Notice, the Bank engaged in good faith negotiations with Fermetco and its attorneys in order to address Fermetco's dire financial situation, to no avail.

21. Moreover, the Bank has been informed that Fermetco's shareholders will not inject funds into Fermetco to cure the defaults.

VII. REASONS JUSTIFYING THE NOMINATION OF A RECEIVER

22. The Bank submits that it is now essential, just and appropriate for the protection of the Hypothecated Property and for the protection of the Bank's interests, that a receiver be appointed by this Court over the assets of Fermetco.
23. The Bank respectfully asks that EY be appointed receiver to take possession of the Hypothecated Property, and to exercise control over these assets and over Fermetco's business.
24. The Receiver is fully aware of Fermetco's business, assets and operations, as it has been assisting the Bank since March 2024 as financial advisor, the whole with the consent of Fermetco and the Guarantors.
25. The nomination of a receiver is now necessary and appropriate for the following reasons:
 - a) The delays provided to Fermetco to repay the indebtedness under the Demand Letter and the Prior Notice have all expired;
 - b) The events of defaults identified in the Default Notice and the Prior Notice have not been cured;
 - c) As set forth in the Default Notice (Exhibit P-9):
 - i) It is clear that Fermetco will not be able to repay the Indebtedness;
 - ii) Fermetco continues to operate at a deficit, which further erodes the Bank's position;
 - d) Fermetco's restructuring efforts did not and cannot lead to the repayment of the indebtedness owed to the Bank;
 - e) Fermetco does not have the financial ability to fund its operations and/or to pay the employees;
 - f) The Guarantor is not prepared to inject equity in the business;
 - g) Fermetco is unable to meet its financial obligations as they generally become due;
 - h) The *status quo* is untenable;
 - i) The current state of affairs requires that Fermetco's assets be administered, safeguarded, and managed by a third party, namely the Receiver; and

- j) The relationship of trust between the Bank and Fernetco has been severed.
26. The Bank has been very patient in the conduct of Fernetco's file, but it is now necessary to appoint a Receiver to mitigate the Bank's damages and to protect its rights towards the Hypothecated Property.
27. Moreover, EY has confirmed to the Bank that it is able and willing to act as Receiver if this Court grants the present Motion and appoints a receiver herein.
28. Finally, the Bank is informed that Fernetco does not contest the Motion.

VIII. THE ADMINISTRATION CHARGE

29. Finally, the Bank requests that this Court approve the creation of an administration charge in favour of EY (as proposed Receiver) as well as its attorneys, up to a maximum aggregate amount of \$300,000.
30. For obvious reasons, the work of the Receiver will be an integral part of these proceedings, and EY has advised that it will only agree to act as Receiver if the Court approves the proposed administration charge.
31. The proposed administration charge will rank senior to all conventional and legal security, on the Hypothecated Property. Given, namely, the estimated realization value of the Hypothecated Property in comparison to the Bank's indebtedness, no other creditor will be further prejudiced by the creation of this charge.
32. The Bank respectfully submits that the scope and amount of the administration charge is reasonable and should be created in accordance with the relevant conclusions sought in the proposed receivership order (Exhibit P-1).

WHEREFORE, MAY IT PLEASE THIS COURT TO:

GRANT the present Motion;

ISSUE a Receivership Order substantially in the form of the draft order communicated as **Exhibit P-1** in support of the Motion;

THE WHOLE without costs save in case of contestation.

Montréal, this November 6, 2024

Fasken Martineau DuMoulin LLP

Fasken Martineau DuMoulin LLP
Attorneys for Royal Bank of Canada

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SWORN STATEMENT

I, the undersigned, Stéphane Ménard, having my professional address at 1, Place Ville-Marie, in the city of Montréal, province of Québec, H3C 3A9, do solemnly declare:

1. I am Principal Director, Special Loans, and a duly authorized representative of Royal Bank of Canada (the “**Bank**”) in the present case;
2. All the facts alleged in the present sworn statement are, to my knowledge, true.
3. Where I have obtained facts from others, I believe them to be true.

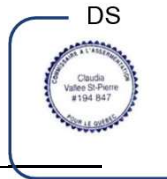
AND I HAVE SIGNED:

DocuSigned by:
Stéphane Ménard
493B4B847A244C9...

STÉPHANE MÉNARD

Declared under oath before me, by
technological means (Microsoft TEAMS),
in Montréal, on November 6, 2024

DocuSigned by:
Claudia Vallée St-Pierre
6B5319659C2349C...



Commissioner for Oaths for Québec

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ROYAL BANK OF CANADA

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-and-

ERNST & YOUNG INC.

Proposed Receiver

**NOTICE OF PRESENTATION
COMMERCIAL PRACTICE (COURTROOM 16.10)**

TO: ERNST & YOUNG INC.
2300-900 Blvd. De Maisonneuve West
Montreal, province of Quebec, H3A 0A8
Proposed Receiver

**AND: Mtre Neil Stein
STEIN & STEIN INC.**
4101, Sherbrooke Street West
Montréal, province of Quebec, H3Z 1A7
nstein@steinandstein.com
Attorneys for Debtor/Respondent

Fonds Régionaux de Solidarité FTQ
Fonds de Solidarité FTQ
545, boulevard Crémazie Est, bureau 200
Montréal (Québec) H2M 2W4

Garrich Holdings Inc.
100-1300 55th Avenue
Lachine, Québec H8T 3J8

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the Motion to Appoint a Receiver will be presented in the Commercial Practice Division of the Superior Court, in Courtroom 16.10 of the Montreal courthouse during the **virtual calling of the roll** on November 12, 2024, at 8h45 a.m., or as soon as counsel may be heard.

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL IN PRACTICE DIVISION

The contact information to join the calling of the roll of room 16.10 is as follows:

a) **using Teams:** click on the link available on the site <http://www.tribunaux.qc.ca/>;

You must then enter your name and click "Join Now". To facilitate the process and the identification of participants, we ask that you enter your name in the following manner:

Attorneys: Mtre name, Surname (name of the party represented)

Trustees: Name, Surname (Trustee)

Superintendent: Name, Surname (superintendent)

Parties non represented by an attorney: Name, Surname (specify : plaintiff, defendant, applicant, respondent, creditor, opposing party, or other)

Persons attending a public hearing may simply indicate "public".

b) **by telephone:**

Canada, Quebec (Charges will apply): +1 581-319-2194

Canada (Toll free): (833) 450-1741

Conference ID: 820 742 874#

c) **by videoconference:** teams@teams.justice.gouv.qc.ca

VTC Conference ID: 11973653703

- d) **in person**, if and only if you do not have access to one of the above-mentioned technological means. You may then go to room 16.10 of the Montreal Courthouse, located at:

1 Notre-Dame St. East, Montréal, Québec

3. FAILURE TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTE that if you wish to contest the proceeding, you must inform in writing the party that initiated the proceeding at the contact information indicated in this notice of presentation at least 48 hours before the date of presentation of the proceeding and participate in the virtual calling of the roll. Otherwise, a judgment may be rendered against you during the presentation of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Duty of cooperation

TAKE NOTE that you are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and to make sure that relevant evidence is preserved (*Code of Civil Procedure*, art. 20).

4.2 Dispute prevention and resolution processes

TAKE NOTE that before referring your dispute to the Court, you must consider private dispute prevention and resolution processes, which consist of negotiation between the parties as well as mediation and arbitration, in which the parties call on a third person to assist them (*Code of Civil Procedure*, art. 2).

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montréal, this November 6, 2024

Fasken Martineau DuMoulin LLP

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Attorneys for Royal Bank of Canada

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ERNST & YOUNG INC.

Proposed Receiver

LIST OF EXHIBITS

- Exhibit P-1:** Draft Receivership Order proposed by the Petitioner
- Exhibit P-2:** Comparative version between comparative version showing the proposed changes between the model order provided by the Barreau de Montréal and the proposed order (Exhibit P-1)
- Exhibit P-3:** Fermetco's entry in the Registre des entreprises du Québec
- Exhibit P-4:** Name change registered under number 24-0518295-0001 at the Register of Personal and Movable Real Rights ("**RPMRR**")
- Exhibit P-5 (en liasse):** Facility Letter
- Exhibit P-6:** 2021 Hypothec
- Exhibit P-7:** 2022 Hypothec
- Exhibit P-8:** RPMRR search results for Fermetco

- Exhibit P-9:** General Security Agreements and their respective registration under the Ontario PPSA and the UCC
(en liasse)
- Exhibit P-10:** Bank's statement of account dated November 4th, 2024
- Exhibit P-11:** Compliance certificate
- Exhibit P-12:** Default Notice
- Exhibit P-13:** Prior Notice
- Exhibit P-14:** Proofs of service and *État certifié* for registrations numbers 24-1291534-0001 and 24-1291534-0002
(en liasse)

Montréal, this November 6, 2024

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