

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) FRIDAY, THE 20<sup>TH</sup>  
 )  
JUSTICE F. MYERS ) DAY OF JUNE, 2014  
 )

THE POLISH ALLIANCE OF CANADA  
Plaintiff

- and -

POLISH ASSOCIATION OF TORONTO LIMITED,  
MAREK MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK,  
JAN ARGYRIS aka LOUIS JOHN ELIE ARGYRIS  
aka LOUIS JOHN ARGYRIS aka JOHN ARGYRIS,  
WLADYSLAW JASLAN aka WLADYSLAW JULIAN JASLAN,  
HELENA JASLAN, EUGENIUSZ SKIBICKI, CZESLAWA ERICKSEN,  
STANISLAW ROGOZ aka STAN ROGOZ, ALBERT JOSEPH FLIS  
and RICHARD RUSEK  
Defendant

**ORDER**  
**(appointing Receiver)**

THIS MOTION made by the Plaintiff for an Order pursuant to the Reasons for Decision of the Honourable Mr Justice F. Myers released May 27, 2014, appointing Collins Barrow Toronto Limited as interim receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Branch 1-7 of The Polish Alliance of Canada and Polish Association of Toronto, Limited (the "Branch and Corporate Defendant") acquired for, or used in relation to the businesses, services and enterprises carried on by the Branch and Corporate Defendant, was heard this day at 361 University Avenue, Toronto, Ontario.

ON READING the affidavit of Janusz Szajna sworn June 18, 2014 and the Exhibits thereto, and on reading the affidavit of Marianne Rabczak sworn June 19, 2014 and on hearing the submissions of counsel for the Plaintiff and for the Defendants, and on reading the consent of Collins Barrow Toronto Limited to act as the Receiver,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated<sup>2</sup> so that this motion is properly returnable today and hereby dispenses with further service thereof.

**APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 101 of the *Courts of Justice Act* and the Order of the Honourable Justice F. Myers made May 27, 2014, Collins Barrow Toronto Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Branch and Corporate Defendant acquired for, or used in relation to any businesses, services or enterprises carried on by the Branch and Corporate Defendants, including all proceeds thereof (the "Property").

**RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business, services or enterprise of the Branch and Corporate Defendant, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Branch or Corporate Defendant;
- (d) to engage consultants, <sup>property managers,</sup> ~~appraisers, agents, experts, auditors, accountants,~~ managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business, services or enterprises of the Branch and Corporate Defendant or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing in respect of the Property and to exercise all remedies of the Branch or Corporate Defendant in collecting such monies, including, without limitation, to enforce any security held by the Branch or Corporate Defendant;
- ~~(g) to settle, extend or compromise any indebtedness owing to in respect of the Property;~~
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the

name and on behalf of the Branch or Corporate Defendant, for any purpose pursuant to this Order;

~~(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;~~

~~(i) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,~~

~~(i) without the approval of this Court in respect of any transaction not exceeding \$5,000.00, provided that the aggregate consideration for all such transactions does not exceed \$10,000.00; and~~

~~(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;~~

~~and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.~~

~~(k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;~~

~~(l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;~~

(m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

~~(n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Branch or Corporate Defendant;~~

~~(o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Branch or Corporate Defendant, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Branch or Corporate Defendant;~~

~~(p) to exercise any shareholder, partnership, joint venture or other rights which the Branch or Corporate Defendant may have; and~~

(q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Branch or Corporate Defendant, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Branch and Corporate Defendant, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any matters relating to the Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such matters relating to the Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

### **NO INTERFERENCE WITH THE RECEIVER**

8. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Branch or Corporate Defendant in respect of the Property, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

9. THIS COURT ORDERS that all Persons having oral or written agreements with the Branch or Corporate Defendant or statutory or regulatory mandates for the supply of goods and/or services to the Property, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Branch or Corporate Defendant are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Branch or Corporate Defendant's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Branch or Corporate Defendant or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

10. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

¶1. THIS COURT ORDERS that all employees of the Branch or Corporate Defendant shall remain the employees of the Branch or Corporate Defendant until such time as the Receiver, on the Branch or Corporate Defendant's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

12. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Branch or Corporate Defendant, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.



### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

13. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

14. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

15. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this

Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

16. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

18. THIS COURT ORDER that prior to the commencement of the Receiver's appointment, ~~and by no later than June 24, 2014, the Plaintiff and Defendant shall~~ provide a retainer of \$25,000 plus HST to the Receiver to be held by the Receiver to be applied against its final account. The Receiver shall render accounts to Plaintiff and Defendant on a regular basis and shall forthwith pay such accounts upon receipt. In the event that the Receiver is of the view that its unpaid invoices and Work-in-Progress will exceed \$25,000, the Receiver shall be at liberty to apply to the Court for its discharge.

#### FUNDING OF THE RECEIVERSHIP

19. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow ~~by way of a revolving credit or otherwise,~~ such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$15,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as

security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

21. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

22. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

23. THIS COURT ORDERS that the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by email, ordinary mail, courier, personal delivery or facsimile transmission to the Branch and Corporate Defendant's creditors or other interested parties at their respective addresses as last shown on the records of the Branch and Corporate Defendant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

24. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

*and any one affected by the removal  
or part of the Receiver's  
powers*

25. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

~~26. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.~~

~~27. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Branch or Corporate Defendant's estate with such priority and at such time as this Court may determine.~~

28. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

*to be held what has in words M*

*ADD SCHEDULE "B" M*

*Order to Issue in this form M. J. June 20/14*

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

1. THIS IS TO CERTIFY that Collins Barrow Toronto Limited, the receiver (the "Receiver") of the assets, undertakings and properties of the Branch or Corporate Defendant acquired for, or used in relation to any business, services or enterprises carried on by the Branch or Corporate Defendant, appointed by Order of the Ontario Superior Court of Justice Superior Court dated the 20 day of June, 2014 (the "Order") made in an action having Court file number CV-08-361644.

2. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

3. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

4. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.


DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Collins Barrow Toronto Limited], solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name: Daniel Weisz

Title: Vice Preseident

Schickel "B" ✓ 

THIS COURT ORDERS THAT Wladyslaw Rabczak, Marianne Rabczak, Marlene Matyszczuk, Teresa Skibicki and anyone with knowledge of this order are prohibited from holding any meeting or a purported meeting of the members of Branch 1-7 of the Polish Alliance of Canada and from conducting or purporting to conduct any election of the executive of Branch 1-7 of the Polish Alliance of Canada.

THIS COURT ORDERS that despite anything in this Order, Mr. Bernie Romano may retain possession of all Property that is currently in his possession on his undertaking to turn such material over to the Receiver or Branch 1-7 of the Polish Alliance of Canada upon the time for appeal from the Order of Justice F. Myers dated May 27, 2014 expiring without an appeal being brought or, if an appeal I brought, to deal with such Property as may be finally directed by the appellate court(s). In the event that the Receiver wishes access to any Property in Mr. Romano's possession, the Receiver and Mr. Romano shall find a cooperative resolution or either may move for directions.

  
June 20/14

THE POLISH ALLIANCE OF CANADA

PLAINTIFF and

POLISH ASSOCIATION OF TORONTO LIMITED, ET AL.  
DEFENDANTS

(Short title of proceeding)

Court file no. CV 08-361644

**ONTARIO SUPERIOR  
COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER (Appointing receiver)**

*Name, address and telephone number of solicitor or party*

**Peter I. Waldmann [LSUC # 23289M]**

Barrister and Solicitor

183 Augusta Avenue

Toronto, Ontario M5T 2L4

tel: (416) 921-3185

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*Lawyer for the Plaintiff:*

*The Polish Alliance of Canada*