

# Court of King's Bench of Alberta

**Citation: AutoCanada Capital Motors GP Inc v Mirbach, 2024 ABKB 645**

**Date:** 20241105  
**Docket:** 1803 09167  
**Registry:** Edmonton

Between:

**AutoCanada Capital Motors GP Inc.**

Plaintiff

- and -

**Calvin Mirbach, 2075868 Alberta Ltd., 1859603 Alberta Corp carrying on business as GRR Leasing, Gregory Rasmussen, 2016543 Alberta Ltd., 2016543 Alberta Ltd. carrying on business as Canuck Auto, Flawless Integrity Ltd., 1406386 Alberta Ltd., 1406386 Alberta Ltd. carrying on business as Auto City Edmonton, Crossline Consulting Ltd., Crossline Consulting Ltd. carrying on business as Auto City Edmonton, Crossline Truck & Auto Sales Ltd., 1513144 Alberta Ltd., 1513144 Alberta Ltd. carrying on business as Auto City Edmonton, Alberta Treasury Branches and Automotive Finance Canada Inc.**

Defendants

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**Reasons for Decision  
of the  
Honourable Justice J.J. Gill**

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## **I. Introduction.**

[1] This decision is in relation to the application brought by PricewaterhouseCoopers Inc., acting in their capacity as Court appointed Receiver (the "Receiver"), seeking advice and direction of the Court in relation to the Sixth Report of the Receiver, dated March 27, 2023 (the

“Sixth Report”) and the legal opinion (the “Legal Opinion”) appended thereto prepared by legal counsel for the Receiver, Miller Thompson LLP (“Receiver’s Counsel”).

[2] The Receiver seeks the following relief:

1. The factual and legal conclusions contained in the Legal Opinion at Schedule “A”, Schedule “E”, Schedule “F”, Schedule “G”, Schedule “H”, Schedule “I”, and paragraphs 8, 1638, 1762 – 1767, 1794 – 1797, and 1728-1735 shall constitute binding findings for all purposes related to the within action (the “**Factual Conclusions**”).
2. The issues recommended to be tried at paragraph 48 of the Legal Opinion (the “**Extant Issues**”) shall be tried.
3. After a trial of the Extant Issues and whatever other procedures the Court may order, interested parties shall make submissions as to what party is entitled to priority with respect to the Vehicles and their proceeds, as well as priority to any sale proceeds posted with the Receiver arising from the Receiver’s dealings with the Vehicles.
4. The document production, Affidavits, Transcripts, Exhibits, and Answers to Undertakings obtained by the Receiver during the course of the Receiver’s investigation and uploaded to the data room (the “**Disclosure Records**”) can be accessed and utilized by any party with a claim against the Vehicles and their proceeds in the within Action.
5. *AutoCanada Capital Motors GP Inc.(AutoCanada), Automotive Finance Canada Inc.(AFC), 2016543 Alberta Ltd., 2016543 Alberta Ltd.* carrying on business as Canuck Auto, Flawless Integrity Ltd., and any such other interested stakeholder wishing to participate shall attend a Judicial Dispute Resolution process pursuant to Rule 4.16(4) within 60 days (the “**JDR**”). The Receiver is not required to participate in the JDR.
6. Those parties who participated in the JDR shall confirm to the Court, in writing, within 65 days of the conclusion of the within Application, that the Judicial Dispute Resolution Process was held and whether a resolution was reached, in whole or in part.
7. The issue of costs of this application is adjourned without a set date.

## **II. Factual Background**

[3] The factual background is set out in the 7 filed reports of the Receiver. The following are some key facts.

## **III. Facts**

[4] On May 7, 2018 a statement of claim was filed by **AutoCanada Capital Motors GP Inc** alleging the fraudulent acquisition and forging of documents relating to ownership of 113 motor vehicles.

[5] Upon an application by AutoCanada Capital Motors GP Inc. (“AutoCanada”) the general partner of Capital Motors LP (“**Capital Jeep**”), on May 18, 2018 an order (the “**Receivership Order**”) was granted by the Honourable Madam Justice Topolniski appointing PricewaterhouseCoopers Inc. (“**PWC**”) as receiver (the “**Receiver**”) of certain vehicles (the “**Vehicles**”). The order was amended on June 13, 2018 by the Honourable Associate Chief Justice K.G. Neilsen. In addition, PWC was appointed Receiver of the records and accounts of 2075868 Alberta Ltd., Calvin Mirbach, Gregory Rasmussen and 1856903 Alberta Corp. carrying on as GRR Leasing as they pertain to the Vehicles (the “**AutoCanada Action**”). The application for a receiver expressly sought the appointment of a receiver with investigative powers to investigate the transactions that had already taken place and identify and locate any funds that had been exchanged with respect to the vehicles.

[6] Pursuant to the Receivership Order, the Receiver was expressly empowered and authorized, amongst other items:

(j) to examine under oath any person reasonably thought to have knowledge of the Property, the transactions related thereto and proceeds derived therefrom, with the same powers as a Trustee in Bankruptcy under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-6, as amended (the “*BIA*”), mutatis mutandis, and order any person liable to be so examined to produce any books, documents, correspondence or papers in that Person’s possession or power in connection therewith... Any report prepared by the Receiver pursuant to the investigative powers granted hereby will first be served upon the parties in care of their respective legal counsel and, unless within seven \*7) days, an application is brought on notice to all parties to seal or otherwise prevent the report from being filed, the Receiver shall file the report.

(k) to investigate and review the basis of any claims against the Vehicles (“**Claims**”), including without limitation, the claims alleged in the Statement of Claim, as amended, commencing these proceedings, including but not limited to:

(i) completing examinations in accordance with section 3(j) of this Order above; and

(ii) seeking from any person, including any party to the within action, the particulars of any transactions, facts, or circumstances and any relevant documents in relation to the Claims (or a Claim);

(l) to prepare and file a written Report to Court setting out the results of its investigations of the Claims, including its factual conclusions, legal opinions of its legal counsel and its recommendations regarding the expeditious and cost-effective resolution of such claims...

[7] On January 24, 2020, an application was brought by Automotive Finance Canada (AFC) that argued that the receivership should be wound up so the parties could pursue litigation given the continued cost of the receivership and the risk of one or more parties not being satisfied with the Receivers opinion and report. The court held that the investigative receivership previously ordered by the court should continue. The Receivers mandate should be completed and the Receiver should be permitted to file its written report .

[8] On January 24, 2020, Justice K.G. Nielsen issued an Order (the “Neilsen Order”) containing the following direction:

2.The Receiver is directed to continue its mandate as set out in the Receivership Order and, following its investigation of the Claims (as defined in the Receivership Order), prepare and file a written report to the Court setting out the results of its investigations of the Claims, including its factual conclusions, legal opinions of its legal counsel and its recommendations regarding the expeditions and cost-effective resolution of such Claims.

[9] Pursuant to the Receivership Order and the Neilsen Order, the Receiver commenced and continued its investigation into the basis of any claims against the Vehicles.

[10] Additional orders have been granted by the court since May 2018 in relation to extensive examination of identified individuals, compelling production of records and matters relating to disclosure of and redaction of records.

[11] On March 27, 2023, the Receiver issued the Sixth Report with the Legal Opinion appended containing several factual findings, conclusions and recommendations.

#### **IV. Position of the Parties**

[12] The Receivers’ application is supported by 2016543 Alberta Ltd., 2016543 Alberta Ltd. carrying on business as Canuck Auto and Flawless Integrity Ltd(“Flawless”) and AFC .

[13] AutoCanada opposes the application for several reasons. AutoCanada submits that there has been a breach of natural justice . It suggested that the process ordered by the court resulted in the Receiver not having to fully disclose their arguments and evidence in support of their application. In addition, it suggests that it was not fair that the Receiver was able to provide a full reply to the submissions of AutoCanada .As a result, it submits that it has being unable to fully respond to the application.

[14] AutoCanada further submits that the role of an investigative receivers is to provide information, help parties move matters along and is not, as is happening in this case, to adjudicate liability. The idea of an investigative receiver is relatively novel. The leading cases primarily from Ontario emphasize the role of an investigative receiver is to provide information to the court but not going as far as is being suggested here which is that the Court is to merely rubberstamp the Legal Opinion. AutoCanada notes that the court has alternatives. It can use the Legal Opinion as an expert report or an agreed statement of facts to enable the parties to use to move to resolution. The Receivers is not entitled to deference on legal issues.

[15] AutoCanada submits that this is not a proper forum to determine legal issues. There must be a trial on the legal issue of ostensible authority otherwise it will be prejudiced as it will have lost the opportunity to fully respond and present its case in an adversarial forum.

[16] AutoCanada also raise an allegation that there is an appearance of bias in relation to the Receiver. This is because the receiver is also the Receiver in the related Crossline matter involving what are described as the Batch 4 vehicles. The Receiver pursued litigation on behalf of Crossline in relation to the vehicles sold by Crossline that ultimately ended up at AutoCanada.

## V. Issue

[17] Should the Receivers' application be granted?

## VI. Analysis:

[18] I will firstly address AutoCanada' submission that there has been a lack of natural justice in this application.

[19] AutoCanada has been involved in the receivership process from the time of the original application in 2018. It applied for and obtained the Receivership Order .It supported the broad investigative mandate that was given to the Receiver .After the appointment AutoCanada has been actively involved. It encouraged the Receiver to examine certain witnesses and obtain third-party documents.

[20] AutoCanada received the sixth report and Legal Opinion in March 2023, approximately 18 months before this application. AutoCanada knew that the content of the report was the basis of the Receivers application. AutoCanada had access to all the relevant documents and evidence It filed a lengthy detailed brief (559 pages) opposing the Receivers application. The Receiver responded as directed with a reply brief.

[21] I find that there was no breach of natural justice. AutoCanada had more than sufficient information and time to fully respond to this application..

## VII. Appearance of Bias

[22] PwC was appointed as Receiver in two Actions: i) this Action, also colloquially known as the "AutoCanada Action", and ii) the Crossline Receivership. The appointment of PwC in both actions and its dual-receivership role has been known to the key stakeholders, including AutoCanada, for over 6.5 years. AutoCanada now raises an allegation that there is an appearance of bias in relation to the Receiver.

[23] The fact that PwC would be acting in these two matters was addressed by the court specifically in 2018 and in fact was approved and supported by AutoCanada. In view of the overlap of parties and issues and the unique circumstances of the case it made sense and was deemed appropriate to have one receiver responsible for both files.

[24] AutoCanada. did not pursue the issue of bias until approximately six weeks before this application and long after they received the Receivers' legal opinion in March 2023. I find that AutoCanada waived its right to raise the issue of bias.

[25] In addition the case law also does not support the suggestion of bias or conflict of interest. In *YBM Magnex International Inc. (Re)* [2000]AJ no 1118,99 ACWS (3d) 962 at para 39 Paperny J. listed the factors typically considered by courts as relevant to deciding whether to exercise their discretion to remove a receiver for conflict of interest. Applying those factors, I find they do not support a finding of conflict or bias.

[26] Specifically, I find that the Receiver's conduct has been transparent and impartial. Any potential conflict was disclosed to AutoCanada throughout these proceedings. There would be prejudice to the estate if the Receiver was removed. There has been significant delay by AutoCanada in pursuing allegations against PwC and Receiver's Counsel. The allegations of bias appear to be tactical.

### VIII. The Receivers Mandate:

[27] The Receiver was appointed pursuant to section 13(2) of the *Judicature Act*. Section 13(2) provides that the court may make an order appointing an interim receiver where it is “just and convenient” to do so, and on “any terms and conditions the Court thinks just”. A Receiver appointed pursuant to section 13(2) is an officer of the court who serves as a fiduciary to all interested parties.

[28] What is clear from a review of the transcripts of the proceedings when the Receiver was appointed is that the appointing judges were very deliberate in making process focused decisions and in deciding what powers to give to the receiver. It is also important to note that the court and the interested parties were facing a very difficult and unusual set of circumstances. As a result, is not surprising that directions were given to the Receiver that were both novel and targeted. All parties were involved in discussing the Receivers mandate.

[29] There is very little case law concerning the role of an investigative receiver. The leading case from Ontario provides several basic principles which are not in dispute to this case. The primary objective of an investigative receiver is to gather information and “ascertain the true state of affairs” concerning the dealings the Receiver was appointed to investigate. *Akagi v Synergy Group (2000) Inc*, 2015 ONCA 368 at para 90, citing *GE Real Estate v Liberty Assisted Living*, 2011 ONSC 4136 at para. The cases do not address the circumstances of a receiver specifically directed by the court to provide factual findings and legal opinions.

[30] What is clear from the case law is that a receiver’s mandate is to be determined from the specific context, the specific wording of the order and considering all the circumstances of the case. The Receiver derives its powers solely from the court. The key factor is the wording of the order appointing the receiver. Here the wording is very clear.

[31] I agree with the submission of AFC in their brief at para 15:

It was clearly intended that the Receiver include legal and factual conclusions in their report and that the Court would rely upon those conclusions where appropriate. Any alternative interpretation would undermine the purpose of the appointment, which was to have the Receiver make conclusions on these issues and recommendations as to an efficient and cost-effective way to resolve the disputes between the parties.

[32] It was suggested by AutoCanada that the Receiver assumed the role of adjudicator. This clearly is not correct. The Receiver is providing information and advice which includes factual conclusions and legal opinions as it was directed to do so by the court. It is up to the court to decide whether any of the recommendations should be accepted or not.

### IX. The Receivers Legal Opinion

[33] In effect the Receivers Legal Opinion summarises the results of the very thorough and comprehensive investigation it carried out as directed by the Court. The Receiver reviewed many thousands of pages of records and conducted formal interviews with 21 individuals. I note that appropriately the Receiver made no findings that involved a credibility assessment

[34] The Receiver is an independent, neutral officer of the court. His recommendations are entitled to some deference.

### A. The Factual Conclusions.

[35] The list of factual conclusions contained in the Receivers Legal Opinion are a combination of summaries of evidence and conclusions derived from the evidence. They are based on the very comprehensive and thorough investigation that was carried out over several years. I am satisfied that the evidence gathered by the Receiver supports these factual conclusions.

### B. The Legal Opinion Concerning Ostensible Authority.

[36] The most contentious issue to be determined is whether the court should accept the Receivers Legal Opinion concerning ostensible authority as set out in paragraphs 1729-1735.

[37] AutoCanada submitted that the factual findings and the law concerning ostensible authority do not support the Receivers legal opinion.

[38] I disagree. The law concerning ostensible authority is well established and set out in a number of cases referred to by all counsel: *Rockland Industries Inc v Amerada Minerals Corp.* [1980] 2 SCR 2, *Doiron v Devon Capital Corp.*, 2003 ABCA 336; *Auer v. Lionstone Holdings Inc.* (2005) ABCA 78 and *Toronto-Dominion Bank v. Currie* (2017) ABCA 45.

[39] The most relevant case is the ABCA case of *Doiron v Devon Capital Corp* . At para 15 :

The law of ostensible authority does not require an explicit representation of authority. It is found where the principal has created a situation such that it is reasonable to infer and rely upon the apparent authority of the person...

[40] In summary one must look at the entire circumstances to determine if ostensible authority has been established. The question is, has a principal by their conduct created a situation directly or indirectly that would leave it reasonable to draw an inference of ostensible authority.

[41] The factual findings in the Legal Opinion overwhelmingly support on a balance of probabilities a finding of ostensible authority. There is more than sufficient reliable and credible evidence that members of the management team of Capital Jeep were aware of and sanctioned both directly and indirectly the behaviour of their wholesaler (M) in selling and purchasing inventory (Batch 1, 2 and 4 vehicles). The evidence is set out in detail in the Legal Opinion and the brief of the Receiver

[42] The fact that the wholesaler had extensive access and that his actions were approved by management is corroborated by the various nonmanagement level employees who were witnesses and participants in the day-to-day operation of the dealership. Also of significance is the evidence that when payment for some vehicles stalled, Capital Jeep decided to keep the wholesaler on their premises to try and collect as much money as possible.

[43] Finally, AutoCanada is not prejudiced by not having a trial on the issue of ostensible authority. The finding does not involve a credibility assessment. As noted, there is more than sufficient uncontroverted evidence that Capital Jeep management directly and indirectly sanctioned the conduct that supports the finding of ostensible authority.

### C. Other Legal Issues

[44] As regards other legal issues, the Receiver was careful to delineate the issues that will require findings of credibility and therefore a trial (see list of extant issues). This list will be useful in moving the matter to final resolution

### X. Decision

[45] The Receiver has brought an application for Advice and Direction regarding the Sixth Report dated March 27, 2023 and Legal opinion including the effect of the Receivers factual findings, conclusions, and recommendations prepared for the receiver by Miller Thomson the Receivers counsel.

[46] I have reviewed the Sixth Report, the Legal Opinion, the court record and considered the submissions made by interested parties to determine if the application should be granted. The Receiver is an officer of the court and independent from any of the interested parties. The Receiver did not exceed his authority and acted in accordance with the mandate. The Receiver was independent, objective, unbiased and acted in good faith.

[47] The Receivers application is approved, and his recommendations accepted subject to the following modifications. Firstly, the time for the JDR is extended from 60 to 90 days and for reporting on the JDR from 65 to 95 days. Secondly the use of the document production, Affidavits, Transcripts, Exhibits, and Answers to Undertakings obtained by the Receiver during the Receiver's investigation and uploaded to the data room (the "Disclosure Records") is to be determined by the parties. If the parties cannot come to an agreement, a further application for court direction can be brought.

[48] In addition, the application for the Receivership to be terminated is also granted subject to any further court direction that may be necessary.

Heard on the 23<sup>rd</sup> – 25<sup>th</sup> day of October, 2024.

**Dated** at the City of Edmonton, Alberta this 5<sup>th</sup> day of November, 2024.

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**J.J. Gill**  
**J.C.K.B.A.**

### Appearances:

Rick T.G. Reeson, K.C., Debra Curcio Lister, K.C., Byran A. Hosking and Alicia York  
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Michele Wolowidnyk and Kristina Tiessen  
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