

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**APPLICATION UNDER SECTION 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**

B E T W E E N

**MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY
LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II
(US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN
BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)**

Applicant

v.

**TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC.,
TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I,
TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS
CANADA CORPORATION**

Respondents

FACTUM OF THE RECEIVER, FTI CONSULTING CANADA INC.
(Receiver's Investigative Powers Motion, Returnable April 3, 2024)

April 1, 2024

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Canada Inc.

TO: **THE SERVICE LIST**

A. Overview

1. FTI Consulting Canada Inc. (“**FTI Consulting**”) in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of certain property owned by the Debtors (as defined below) brings this unopposed motion for expanded investigative powers.

2. This Court has the jurisdiction to grant the powers sought by the Receiver, and those powers are required so that the Receiver can more fully understand certain transactions that the Debtors entered into. This understanding is required to identify and advance potential claims in order to maximize stakeholder recovery.

3. The Receiver has worked diligently since its appointment to identify and realize on the Debtors’ assets, including claims the Debtors have (or may have) against third parties (including potential related parties). But the Receiver’s task has been much more difficult because:

- (a) the Debtors’ business involved a very large number of related party transactions (and other transactions) that are difficult to understand based solely on the Debtors’ records;
- (b) third parties have alleged that the Debtors’ books and records are not accurate; and
- (c) some of the Debtors’ key employees have refused to meet with the Receiver unless it pays their legal fees, which the Receiver is not prepared to do based on the circumstances.

4. In order to overcome these obstacles, and obtain accurate information about potential recovery that may be available to the Debtors, the Receiver seeks (among other powers) the right

to examine persons with knowledge of the Debtors' business under oath and compel the production of documents relevant to the Debtors' business. The Receiver also seeks the right (but not the obligation) to assign one or more Debtors into bankruptcy.

5. The Receiver's motion is supported by the Debtors' senior secured lender and fulcrum creditor. It is not opposed by any party. The Receiver submits that the powers sought by the Receiver will help facilitate the Receiver's mandate, and the motion should be granted.

B. Background

6. The Receiver was appointed the Receiver, without security, of certain property (collectively the "**Property**") of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. ("**Techlantic**") and TX Ops Canada Corporation (collectively, "**Trade X**" or the "**Debtors**") by Order of Justice Cavanagh dated December 22, 2023 (the "**Receivership Order**").

7. The Debtors were primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from or sell inventory to Canada, the United States and other overseas markets. Their operations were carried out by a number of entities.¹

8. Since its appointment, the Receiver has, among other things, worked to liquidate the Debtors' remaining vehicle assets and collect amounts owed to the Debtors. That process is

¹ Second Report of the Receiver dated March 27, 2024 (the "**Second Report**") at para. 2, Receiver's Motion Record dated March 27, 2024 ("**MR**"), Tab B, p. 20. [\[CL No. E52\]](#)

substantially complete. To date, the Receiver has recovered approximately \$1.8 million from the sales of remaining vehicles and collection of amounts owed to the Debtors.²

9. Based on the current information available to the Receiver, recoveries from the Debtors' assets may not be sufficient to pay the Debtors' senior secured lender in full or pay any amount to the Debtors' unsecured creditors and equity investors.³

C. The Receiver's investigation

10. The Receiver has identified certain claims that the Debtors may be able to assert, but it requires accurate information about these claims to move forward.⁴ The potential claims identified by the Receiver are described in paragraphs 26-34 and 52-53 of the Second Report.⁵ The transactions and potential related claims that the Receiver seeks to further investigate include:

- (a) A claim for approximately \$8 million arising from the alleged diversion of funds from one of the Debtors' subsidiaries by the party that sold that subsidiary to the Debtors;⁶
- (b) Investments in the Debtors that were allegedly paid to companies controlled by the Debtors' founder and CEO;⁷

² Second Report at paras. 4-5, MR Tab B, p. 21. [[CL No. E53](#)]

³ Second Report at para. 14, MR Tab B, p. 24. [[CL No. E56](#)]

⁴ This does not include the claim that the Receiver has already asserted, which are discussed below.

⁵ Second Report at paras. 26-34 and 52-53, MR Tab B, p. 26-29, and 32-33. [[CL No. E58-E61](#) and [E65-E66](#)]

⁶ Second Report at paras. 26-29, MR Tab B, p. 26-29. [[CL No. E58-E60](#)]

⁷ Second Report at paras. 30-31, MR Tab B, p. 28. [[CL No. E60](#)]

- (c) Apparent overpayments totalling more than \$1.5 million to a company controlled by a former executive of the Debtors, or members of his family;⁸
- (d) A very large number of transactions between one of the Debtors, Techlantic Ltd. and two related corporations operated by Eric and Wouter Van Essen (the “**Van Essen Companies**”).⁹

11. The Receiver believes that the Debtor may have valid claims against potential related parties and other third parties and that those claims may enhance stakeholder recovery. However, the Receiver requires accurate information in order to determine whether and how to advance these claims.

12. The Receiver’s attempt to collect on amounts owing to the Debtors has been complicated by the state of the Debtors’ accounting records:

- (a) the Receiver has received conflicting information from the Debtors and other parties about significant transactions involving the Debtors;¹⁰
- (b) the Debtors’ books and records are complicated and involve a large number of accounting entries reflecting the transfer of vehicles (and potentially funds) between various Debtors and other parties for purposes that are unclear to the Receiver at this time;¹¹

⁸ Second Report at paras. 32-34, MR Tab B, p. 28-29. [[CL No. E60-E61](#)]

⁹ Second Report at para. 52, MR Tab B, p. 33. [[CL No. E65](#)]

¹⁰ Second Report at para. 6(a), MR Tab B, p. 21. [[CL No. E53](#)]

¹¹ Second Report at para. 6(b), MR Tab B, p. 21. [[CL NO. E53](#)]

(c) the Debtors engaged in a large number of transactions with companies owned or controlled by the Debtors' directors, officer and/or members of their immediate families. The details of these transactions were not fully disclosed to the Receiver, and the Receiver learned important details about the transactions from its review of the Debtors' e-mails.¹²

13. The Receiver has tried to engage with some of the Debtors' current and former directors, officers, employees and consultants to understand the foregoing transactions. Several such individuals have refused to meet with the Receiver, or refused to meet with the Receiver unless the Receiver paid for them to hire counsel.¹³

14. The Receiver has also tried to obtain information from third parties (including potential related parties) that have engaged in transactions with the Debtors in order to understand those transactions. The Receiver has received incomplete responses and, in some cases, no response at all.¹⁴

15. In light of the foregoing, the Receiver has determined that it requires expanded investigative powers in order to understand the Debtors' business and assets (including claims against other parties) that might provide additional recovery for the benefit of the Debtors' creditors. The Receiver served a Notice of Motion dated March 21, 2024 seeking, among other

¹² Second Report at para. 6(c), MR Tab B, p. 21. [[CL No. E53-E54](#)]

¹³ Second Report at para. 7, MR Tab B, p. 22. [[CL No. E54](#)]

¹⁴ Second Report at para. 8, MR Tab B, p. 22. [[CL No. E54](#)]

things, enhanced investigative powers, including the right to examine persons with relevant information under oath and compel the production of relevant documents.¹⁵

D. The power to assign certain Debtors into bankruptcy

16. In addition, the Receiver seeks the authority (but not the requirement) to assign one or more of the Debtors into bankruptcy in the event that such assignments are necessary or appropriate.

17. The Debtors are insolvent and, based on the current facts and circumstances and information available to the Receiver, the Receiver does not believe that there is a realistic prospect of a going concern sale.¹⁶

18. The Receiver believes that the powers of a trustee in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) may assist the investigation and ultimate recovery available to the Debtors. It is cognizant, however, of the additional potential administrative expenses associated with a bankruptcy and so it does not seek to make any bankruptcy assignments immediately. Instead, it seeks authority to assign some or all of the Debtors into bankruptcy at a later date if it determines that the assignment is likely to enhance stakeholder recovery.¹⁷

E. The Van Essen Motion

19. The Receiver has already advanced one claim against the Van Essen Companies, with respect to \$1.7 million paid for vehicles owned by Techlantic but received by the Van Essen Companies. The Van Essen Companies kept these funds, and purported to apply them to reduce a debt allegedly owed by Techlantic to the Van Essen Companies (the “**Purported Set-Off**”). The

¹⁵ Second Report at para. 9, MR Tab B, p. 22. [[CL No. E54](#)]

¹⁶ Second Report at para. 10, MR Tab B, p. 23. [[CL No. E55](#)]

¹⁷ Second Report at para. 11, MR Tab B, p. 23. [[CL No. E55](#)]

Receiver commenced a motion (the “**Van Essen Motion**”) to set aside the Purported Set-Off because it was a breach of the Order of Justice Penny dated December 11, 2023 (which prohibited the exercise of any remedies against the Debtors) and was a preference contrary to section 95 of the *Bankruptcy and Insolvency Act*.

20. The Receiver believes that it has already gathered sufficient evidence to support the Van Essen Motion. The proposed investigation is not focused on the Van Essen Motion, although it is possible that the investigation will uncover further evidence relevant to the Van Essen Motion.

F. Law and argument

21. It is well-established that this Court can authorize an investigation into the Debtors’ affairs including, in appropriate circumstances, affairs and transactions concerning related non-parties.¹⁸ As this Court has previously held, such an investigation will be justified where there is a “lack of transparency” into the operation of the business, a “lack of good faith in providing financial and operational information” or “red flags for potential fraud” including the transfer of assets to friends and family.¹⁹

22. The primary objective of an investigative receivership (or, in this case, adding enhanced investigative powers to an existing receivership) is to alleviate risks posed to stakeholder recovery, ascertain the true state of affairs concerning the Debtors’ assets and financial dealings and equalize

¹⁸*Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368 at [para. 66](#), which held that the mandate of a receiver appointed under [section 101](#) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 could include an investigation; See also *PricewaterhouseCoopers Inc. v. Northern Citadel*, 2023 ONSC 37 at [paras. 96-99](#).

¹⁹ *Randhawa v Randhawa*, 2021 ONSC 3643 at [para. 40](#).

the “informational imbalance” between debtors and creditors with respect to the debtor’s financial dealings.²⁰

23. The Receiver respectfully submits that the relief sought on this motion is required to achieve these aims.

24. The Debtors may have significant claims against various parties. But the Receiver can only maximize the value of those claims if it has the best available information about the Debtors’ business. Otherwise, the Receiver may be forced to forego meritorious claims (because it lacks the information required to advance them) or commence potentially unmeritorious claims (in order to secure the information it requires through the litigation process). In either case, there is a risk to stakeholder recovery.

25. In addition, the relief sought is a logical extension of the powers that the Receiver already has. The Receivership Order contains the standard requirement that any person with documents about the Debtors’ business produce those documents. These documents should have allowed the Receiver to understand the Debtors’ business. But information obtained by the Receiver does not appear to be at all times reliable or consistent, and the accounting records of the Debtors are complex and difficult to interpret absent additional information and assistance from the Debtors’ representatives and other parties, a number of whom have refused to meet with the Receiver to date.²¹

²⁰ *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368 at [para. 90](#).

²¹ Second Report at para. 60, MR Tab B, p. 35. [[CL No. E67](#)]

26. It is also relevant that the Debtors' senior secured creditor ("MBL") supports the motion. MBL may, unfortunately, recover less than the full amount of its debt. MBL supports the investigation and that support should, in these circumstances, carry significant weight.

27. Finally, the Receiver notes that it served its motion record on the service list in this proceeding and on certain individuals that it intends to examine if its motion is granted. None of these parties have opposed the relief sought. This, too, weighs in favour of granting the relief sought.

G. Conclusion

28. The Receiver respectfully requests that the relief set out in the Receiver's Notice of Motion dated March 21, 2024 be granted so that it is able to obtain the additional information it requires to make appropriate assessments on potential additional recoveries that may be available to the Debtors for the benefit of their creditors.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1st DAY OF APRIL, 2024.

Per: 

GOODMANS LLP
Lawyers for the Receiver,
FTI Consulting Canada Inc.

SCHEDULE A

LIST OF AUTHORITIES

1. *Akagi v. Synergy Group (2000) Inc.*, [2015 ONCA 36](#)
2. *PricewaterhouseCoopers Inc. v. Northern Citadel*, [2023 ONSC 37](#)
3. *Randhawa v Randhawa*, [2021 ONSC 3643](#)

SCHEDULE B

STATUTORY REFERENCES

Courts of Justice Act, R.S.O. 1990, CHAPTER C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

MBL ADMINISTRATIVE AGENT II -and-
LLC

TRADE X GROUP OF COMPANIES
INC. et al

Court File No. CV-23-00710413-00CL

Applicant

Respondents

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Proceeding commenced at Toronto

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