



Court File No: CV-18-00602537-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THE 6th DAY OF
JUSTICE *CONWAY*)
)
) JANUARY, 2020

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO ~~INC~~LTD., 1496765 ONTARIO ~~INC~~LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

ORDER

THIS MOTION, made by RSM Canada Limited ("**RSM**") in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 2495087 Ontario Inc., 2496800 Ontario Inc., 1527020 Ontario Inc., 1651033 Ontario Ltd., 1496765 Ontario Ltd. and Sunshine Propane Inc. (the "**Debtors**"), for an order authorizing the Receiver to, among other things, make a Final Interim Distribution (as defined and described below) and for the Receiver's discharge, was heard this day at Toronto, Ontario.

ON READING the Fifth Report to the Court of the Receiver dated December 18, 2019 (the "**Fifth Report**") and on hearing the submissions of counsel for the Receiver and the Applicant, and no one else appearing, although properly served as appears from the affidavit of Michelle Jackson sworn December 19, 2019, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Fifth Report and the conduct and activities of the Receiver to December 17, 2019 set out therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period August 1, 2019 to November 30, 2019, together with those fees estimated to completion, as set out in the Fifth Report, be and are hereby approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's counsel for the period August 1, 2019 to December 15, 2019, together with those fees estimated to completion, as set out in the Fifth Report be and are hereby approved.
5. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements for the period August 29, 2018 to December 15, 2019, as set out in the Fifth Report, be and is hereby approved.
6. **THIS COURT ORDERS** that the Receiver is authorized to pay the following amounts to BMO, unless BMO otherwise directs (the "**Final Interim Distribution**"):
 - (a) \$62,550 plus accrued interest from the Receiver's trust account in respect of 1496765 Ontario Ltd.;
 - (b) \$55,032 plus accrued interest from the Receiver's trust account in respect of 1651033 Ontario Ltd.;

- (c) \$55,921 plus accrued interest from the Receiver's trust account in respect of 1527020 Ontario Inc.;
- (d) \$55,877 plus accrued interest from the Receiver's trust account in respect of 2495087 Ontario Inc.;
- (e) \$54,025 plus accrued interest from the Receiver's trust account in respect of 2496800 Ontario Inc.; and
- (f) from the remaining Etobicoke Funds, less the Receiver's Holdback (both as defined in the Fifth Report):
 - (i) an amount equal to the direct indebtedness of 1651033 (Burlington) to BMO; and
 - (ii) in respect of the balance of the remaining Etobicoke Funds, 50% to be applied against the indebtedness of 1527020 (Port Colborne) to BMO, and 50% to be applied against the indebtedness of 2496800 (Goderich) to BMO.

7. **THIS COURT ORDERS** that upon completion of the Remaining Duties (as defined and described in the Fifth Report), the Receiver is authorized to pay to BMO (i) the remaining balance, if any, of the Receiver's Holdback; and (ii) any additional funds that come into the hands of the Receiver provided that the repayments do not exceed the Debtors' indebtedness to BMO.

RECEIVER'S DISCHARGE

8. **THIS COURT ORDERS** that and upon the Receiver filing with this Court a certificate substantially in the form appended hereto as Schedule "A" certifying that it made the Final Interim Distribution, the Receiver shall be discharged as Receiver of the assets, undertakings and properties of the Debtors, provided however that notwithstanding its discharge as Receiver herein, RSM shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all

authorizations, approvals, protections and stays of proceedings in favour of RSM in its capacity as receiver and manager.

9. **THIS COURT FURTHER ORDERS AND DECLARES** that RSM is hereby released and discharged from any liability that RSM now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of RSM while acting in its capacity as Receiver including for certainty, in carrying out the Remaining Duties, save and except for any gross negligence or willful misconduct on the Receiver's part. Without limiting the generality of the foregoing, RSM is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the receivership, save and except for any gross negligence or willful misconduct on the Receiver's part.

10. **THIS COURT FURTHER ORDERS AND DECLARES** that notwithstanding its discharge herein, RSM may perform such incidental duties as may be required by it as Receiver to complete its obligations pursuant to its appointment as Receiver including, for certainty, carrying out the Remaining Duties, and RSM shall be forever released and discharged from any and all liability related to such incidental duties, save and except for any gross negligence or willful misconduct on the Receiver's part.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JAN 06 2020

PER / PAR: *AE*

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Schedule "A"

Court File No. CV-18-00602537-00CL

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

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 Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

RECEIVER'S DISCHARGE CERTIFICATE

A. By Order of the Ontario Superior Court of Justice (Commercial List) dated August 29, 2018 (the "Receivership Order"), RSM Canada Limited was appointed receiver and manager (the "Receiver") of the assets and undertakings of the Respondents.

B. Pursuant to an Order of the Court dated January •, 2020 (the "Discharge Order"), the Court provided for the discharge of the Receiver upon certification that it has made the Final Interim Distribution, as defined in and approved by the Discharge Order.

THE RECEIVER CERTIFIES it has made the Final Interim Distribution.

**RSM CANADA LIMITED, in its capacity as
 Receiver of the Respondents and not in
 its personal capacity**

Per: _____

Name:

Title:

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BANK OF MONTREAL

-and-

2495087 ONTARIO INC. et al.

Court File No. CV-18-00602537-00CL

Applicant

Respondents

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Receiver