

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

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

1000038049 ONTARIO INC. and 2504715 ONTARIO INC.

Respondents

FACTUM OF THE RECEIVER

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capacity as Court-Appointed Receiver**

TO: THE SERVICE LIST

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PART I – OVERVIEW

1. This factum is filed by Rosen Goldberg Inc. (“**RGI**”), in its capacity as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of 1000038049 Ontario Inc. (“**049 Ontario**”) and 2504715 Ontario Inc. (“**715 Ontario**”, and together with 049 Ontario, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including the real property municipally known as 96 Crockford Blvd., Scarborough, Ontario (the “**Real Property**”), in support of its motion for the following relief:

- (a) an approval and vesting order (the “**AVO**”), among other things:
 - (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale dated February 2, 2026 (the “**Sale Agreement**”) between the Receiver and Gurvir Singh Pahal (“**Pahal**”), as

assigned by Pahal to 2767501 Ontario Inc. (the “**Purchaser**”) pursuant to an assignment of asset purchase agreement dated February 19, 2026 (the “**Assignment Agreement**”); and

- (ii) vesting in the Purchaser all of 049 Ontario’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), including the Real Property, free and clear of all claims and encumbrances (other than permitted encumbrances);
- (b) an interim distribution and ancillary relief order (the “**Interim Distribution Order**”), among other things:
- (i) approving the First Report of the Receiver dated March 9, 2026 (the “**First Report**”), including the actions and activities of the Receiver described therein;
 - (ii) approving the fees and disbursements of the Receiver and its counsel, Chaitons LLP (“**Chaitons**”);
 - (iii) approving the Receiver’s interim statement of receipts and disbursements for the period January 13, 2025 to March 4, 2026;
 - (iv) sealing the confidential appendices to the First Report (the “**Confidential Appendices**”) until completion of the Transaction or further order of this Court;
 - (v) authorizing the Receiver to assign 049 Ontario into bankruptcy;

(vi) authorizing and directing the Receiver, subject to maintaining such reserves as the Receiver deems appropriate for the proper administration of the receivership estate and the payment by the Receiver of the amounts secured under the Receiver's Borrowings Charge (as defined below), the fees of the Receiver and Chaitons, and the Priority Claims Reserve (as defined below), to distribute to Bank of Montreal ("**BMO**"), in respect of its secured claim, the Net Proceeds of Sale (as defined below) and any other funds in the possession of the Receiver, but not to exceed the amount of BMO's secured claim (the "**Interim Distribution**"); and

(c) such further and other relief that the Receiver may request and this Honourable Court may consider just.

2. Capitalized terms used but not defined in this Factum have the meanings ascribed thereto in the First Report.

PART II – FACTS

A. Background

1. Pursuant to the order of the Honourable Justice Kimmel dated February 12, 2025 (the "**Appointment Order**"), RGI was appointed Receiver of the Debtors and all of their assets, undertakings and properties, including the Real Property.¹

2. The Debtors are related corporations with their registered offices in Markham, Ontario. Siva Sivagnanasundaram ("**Siva**") is the principal of the Debtors.²

¹ First Report at para 1; Appendix "A" to the First Report.

² First Report at para 3.

3. 715 Ontario previously carried on business as a supplier of granite, marble and quartz countertops from leased premises located in Markham, Ontario.³

4. 049 Ontario is the registered owner of the Real Property, consisting of approximately 0.43 acres improved with a 9,000 square foot building containing office and industrial space. 049 Ontario has no employees.⁴

B. Creditors and Security

i. BMO's Secured Indebtedness

5. Pursuant to a Letter of Agreement dated January 3, 2023, BMO advanced \$2,750,000 to 049 Ontario (the “**049 Loan**”). The 049 Loan was advanced for the purposes of refinancing the Real Property⁵.

6. Pursuant to a separate Letter of Agreement dated January 3, 2023, BMO advanced three credit facilities to 715 Ontario including:

- (a) a \$250,000 equipment leasing facility;
- (b) a \$20,000 corporate MasterCard facility; and
- (c) a \$100,000 operating loan.⁶

7. As security for these obligations, the Debtors granted BMO, among other things:

- (a) a first-ranking charge against the Real Property in the principal amount of \$2,750,000, registered on title on March 1, 2023 (the “**BMO Charge**”); and
- (b) general security agreements dated February 23, 2023 from each of the Debtors, granting BMO security over all present and after-acquired personal property.⁷

³ First Report at para 4.

⁴ First Report at para 5.

⁵ First Report at para 11.

⁶ First Report at para 12.

⁷ First Report at para 14.

8. As of February 22, 2026, approximately \$3,313,644 was owing to BMO, together with accruing interest and costs.⁸

9. Searches against the Debtors disclose registrations pursuant to the *Personal Property Security Act* (Ontario) only in favour of BMO.⁹

ii. Other Encumbrances Registered on Title to the Real Property

10. The parcel register for the Real Property discloses the following encumbrances registered subsequent to the BMO Charge:

- (a) Charge in favour of Anchana Balachandran in the principal amount of \$240,000 registered on May 19, 2023;
- (b) Construction lien by Maple Build Ltd. (“**Maple Build**”) in the amount of \$42,375 registered on November 23, 2023 (the “**Construction Lien**”);
- (c) Certificate of pending litigation in favour of 1437558 Ontario Inc. (the “**Prior Owner**”) registered on November 29, 2023 (the “**CPL**”); and
- (d) Certificate of action registered by Maple Build on December 27, 2023.¹⁰

iii. Prior Owner’s Statement of Claim

11. On November 21, 2023, the Prior Owner filed a statement of claim as against 049 Ontario and Siva (the “**Statement of Claim**”) relating to unpaid HST arising from 049 Ontario’s purchase of the Real Property in December 2021.¹¹

12. The Receiver understands that, on October 19, 2021, the Prior Owner entered into an agreement of purchase and sale with Siva in respect of the Real Property. As part of the closing documents, 049 Ontario provided an HST Certificate and Indemnity (the “**HST Document**”). Pursuant to the HST Document, 049 Ontario certified that it would comply with the self-assessment

⁸ First Report at para 15; Appendix “B” to the First Report.

⁹ First Report at paras 32-33; Appendix “K” to the First Report.

¹⁰ First Report at para 16-17; Appendix “C” to the First Report.

¹¹ First Report at para 18; Appendices “D” and “E” to the First Report.

provisions under Subsection 228(4) of *Excise Tax Act* and provided an HST registration number. The Prior Owner proceeded to close the real estate transaction without collecting any HST.¹²

13. The Receiver understands that the HST registration number provided by 049 Ontario was invalid as 049 Ontario was not a registrant at the time of purchase. As a result, the Prior Owner was assessed HST on the sale of the Real Property to 049 Ontario.¹³

14. Based on the Statement of Claim, the Prior Owner asserted a claim for damages in the amount of \$427,735.93, together with additional interest, penalties and other fees or charges assessed by the Canada Revenue Agency (“CRA”). The Prior Owner also asserted an equitable interest in the Real Property based on a constructive or resulting trust and entitlement to a vendor’s lien over the Real Property.¹⁴

15. On October 28, 2024, BMO’s counsel received a letter from the Prior Owner’s counsel (the “**Letter**”) enclosing an order of the Honourable Justice Koehnen dated November 28, 2023 (the “**Koehnen Order**”) which prohibited 049 Ontario, and anyone with knowledge of the Koehnen Order, from directly or indirectly selling the Real Property.¹⁵

16. In the Letter, the Prior Owner stated that, without waiving its right to strictly enforce the Koehnen Order, it was prepared to consent to the removal of the CPL to permit a sale of the Real Property, provided that any funds remaining after discharge of the registered mortgages and any necessary transactional costs were paid into court rather than to 049 Ontario and Siva.¹⁶

17. On January 31, 2025, the Honourable Justice Koehnen granted an order (the “**January 2025 Koehnen Order**”), on consent of the Prior Owner, which varied the Koehnen Order so that the

¹² First Report at paras 19-21.

¹³ First Report at para 22.

¹⁴ First Report at para 23.

¹⁵ First Report at para 24; Appendices “F” and “G” to the First Report.

¹⁶ First Report at para 109.

injunctions in the Koehnen Order do not apply to the enforcement by BMO of its mortgage over the Real Property or to the appointment of a receiver to dispose of the Real Property.¹⁷

18. BMO is not a party to the Prior Owner's action against 049 Ontario and Siva as described in the Statement of Claim. To the Receiver's knowledge, the Prior Owner has not challenged the validity or priority of BMO's Charge.¹⁸

iv. Other Claims

19. With respect to the Construction Lien, the 049 Loan was not made for the purposes of financing improvements to the Real Property.¹⁹ Maple Build supplied services or materials to 049 Ontario from August 1, 2023 to September 28, 2023 (i.e. after the BMO Charge was registered on title). Accordingly, the BMO Charge enjoys priority over the Construction Lien pursuant to the provisions of the *Construction Act*.²⁰

20. Execution searches against the Debtors disclosed certain writs of execution, all of which were issued after the registration of the BMO Charge.²¹

21. As of February 11, 2026, there are outstanding realty taxes in the amount of \$100,317.47 in respect of the Real Property.²²

C. Receiver's Activities

22. The Receiver's activities are described in the First Report,²³ and have included, among other things, reviewing the Debtors' HST filings, and communicating with the CRA regarding potential HST liabilities and refunds.²⁴

¹⁷ First Report at para 26; Appendix "H" to the First Report.

¹⁸ First Report at para 109.

¹⁹ First Report at para 105.

²⁰ First Report at para 106.

²¹ First Report at para 31; Appendix "J" to the First Report.

²² First Report at para 39.

²³ First Report at paras 43-64.

²⁴ First Report at paras 40-64.

23. CRA issued a Notice of Assessment dated June 24, 2025, assessing an HST liability for the period ending December 31, 2023 in the amount of \$9,733.43, of which \$8,657.23 is asserted by CRA as a deemed trust claim.²⁵

24. CRA is presently reviewing certain HST filings of the Debtors. The final quantum of any HST liability has not yet been determined and is subject to further CRA audit.²⁶

D. Environmental Site Assessments

25. Phase I and Phase II Environmental Site Assessment reports (the “**Environmental Reports**”) identified certain groundwater and soil samples at the Real Property that were not in compliance with applicable environmental regulatory standards.²⁷

26. The Environmental Reports were made available to prospective purchasers during the sale process to allow bidders to independently assess environmental risk and remediation exposure.²⁸

27. The Receiver obtained an estimate of the costs to remediate the environmental issues (the “**Remediation Estimate**”). Having regard to the estimated remediation costs, uncertainty of scope, time delay, and the risk that remediation would not materially increase recoveries, the Receiver determined that selling the Real Property on an “as is, where is” basis was in the best interests of stakeholders.²⁹

E. Sale Process

28. The Receiver obtained an appraisal of the Real Property from Avison Young Valuation & Advisory Services, LP (“**Avison**”).³⁰

²⁵ First Report at para 60.

²⁶ First Report at paras 61.

²⁷ First Report at paras 65-68; Confidential Appendix “A” to the First Report.

²⁸ First Report at para 69.

²⁹ First Report at paras 71-73; Confidential Appendix “B” to the First Report.

³⁰ First Report at paras 75-76; Confidential Appendix “C” to the First Report.

29. The Receiver retained Avison as listing broker after considering, among other things, Avison's experience marketing similar properties, its proposed marketing strategy, and its commission structure.³¹

30. Pending completion of the Environmental Reports, in mid-April 2025, the Receiver entered into an exclusive listing agreement with Avison. On November 24, 2025, the listing was converted from an exclusive listing to an MLS listing.³²

31. Avison widely marketed the Real Property through, among other things, MLS listing, direct broker outreach, electronic marketing campaigns and other advertising.³³

32. Prospective purchasers that executed confidentiality agreements were granted access to a virtual data room containing information regarding the Real Property, including the Environmental Reports.³⁴

33. Marketing efforts generated forty-six (46) inquiries, eleven (11) showings, and seven (7) executed confidentiality agreements.³⁵

34. The Receiver received two (2) offers for the purchase of the Real Property.³⁶

35. Having regard to, among other things, the purchase price, material conditions, and certainty of closing, the Receiver determined that the offer submitted by Pahal represented the highest and best recovery available to the estate.³⁷

36. Following further negotiations, which resulted in an improved offer from Pahal, the Receiver entered into the Sale Agreement with Pahal, in trust for a corporation to be incorporated.³⁸ Pursuant

³¹ First Report at para 78.

³² First Report at paras 79-80.

³³ First Report at para 82.

³⁴ First Report at para 83.

³⁵ First Report at para 84.

³⁶ First Report at para 85; Confidential Appendix "D" to the First Report.

³⁷ First Report at paras 86-87.

³⁸ First Report at paras 88-89.

to the Assignment Agreement dated February 19, 2026, Pahal assigned all of his right, title and interest in and to the Sale Agreement to the Purchaser.³⁹

37. The material terms of the Sale Agreement are summarized in the First Report.⁴⁰

F. Interim Distribution

38. Pursuant to the Appointment Order, the Receiver benefits from court-ordered charges securing the fees and disbursements of the Receiver and its counsel (the “**Receiver’s Charge**”) and the monies borrowed by the Receiver (the “**Receiver’s Borrowings Charge**”).⁴¹

39. The Receiver has obtained a legal opinion from its counsel with respect to the validity of the security granted in favour of BMO under the laws of the Province of Ontario, concluding, subject to customary qualifications, assumptions and limitations included therein, that BMO’s Security is valid and enforceable.⁴²

40. Potential priority claims include: (a) municipal realty taxes relating to the Real Property which will be paid on closing of the Transaction; and (b) a potential deemed trust claim asserted by CRA for HST in the amount of \$8,657.23.⁴³ As previously noted, the final quantum of HST liability has not yet been determined.⁴⁴

41. Pending final confirmation of any potential priority claims that may arise, the Receiver intends to maintain a reserve in an amount sufficient to satisfy all priority payables (the “**Priority Claims Reserve**”), notwithstanding the proposed Interim Distribution.⁴⁵

42. For the reasons discussed in the First Report, the Receiver does not propose to maintain a holdback in respect of the Construction Lien or the Prior Owner’s claim.⁴⁶

³⁹ First Report at para 89; Appendices “M” and “N” to the First Report; Confidential Appendix “E” to the First Report.

⁴⁰ First Report at para 90.

⁴¹ First Report at para 97.

⁴² First Report at para 98.

⁴³ First Report at paras 100-101.

⁴⁴ First Report at para 101.

⁴⁵ First Report at para 102.

⁴⁶ First Report at paras 104-110.

43. Based on the anticipated net proceeds of sale from the Transaction (the “**Net Proceeds of Sale**”) and the amount owing to BMO, the Receiver expects that BMO will suffer a shortfall in respect of its secured indebtedness.⁴⁷

PART III – ISSUES

44. The main issues on this motion are whether the Court should:

- (a) approve the Transaction and grant the AVO;
- (b) seal the Confidential Appendices;
- (c) authorize the Interim Distribution;
- (d) authorize the Receiver, if necessary, to assign 049 Ontario into bankruptcy;
- (e) approve the fees and disbursements of the Receiver and Chaitons; and
- (f) approve the First Report, including the activities of the Receiver described therein.

PART IV – LAW AND ARGUMENT

The Transaction Should Be Approved and the AVO Should Be Granted

45. This Court has the jurisdiction to grant the AVO. The Appointment Order authorizes the Receiver to sell, convey, transfer, lease or assign the Debtors’ Property (as defined in the Appointment Order) with the approval of the Court, and to seek a vesting order or any other order necessary to convey the Debtors’ Property to a purchaser, free and clear of liens or encumbrances.⁴⁸ Section 100 of the *Courts of Justice Act* (the “**CJA**”), as amended, similarly authorizes the Court to grant an order

⁴⁷ First Report at para 113.

⁴⁸ *Bank of Montreal v. 10000038049 Ontario Inc. et al.* (February 12, 2025), Toronto, Court File No. CV-25-00734605-00CL, [Order (Appointing Receiver)] (ONSC), (Kimmel J) (the “**Appointment Order**”) at paras. 3 (j), 3 (k) and 3(l); Appendix “A” to the First Report.

vesting “in any person an interest in real or personal property that the Court has authority to order be conveyed”.⁴⁹

46. The following criteria are to be considered by the Court when asked to approve a sale of assets in a receivership context, as articulated by the Court of Appeal for Ontario in *Royal Bank of Canada v. Soundair Corp.* (“*Soundair*”):⁵⁰

- (a) whether the party made a sufficient effort to obtain the best price and did not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the party obtained offers; and
- (d) whether the working out of the process was unfair.

47. Deference is to be afforded to a receiver in respect of its proposed sales process. Absent a violation of the *Soundair* principles or other exceptional circumstances, the Court should uphold the business judgment of the receiver, as its court officer.⁵¹

48. It is respectfully submitted that the *Soundair* test is readily met on the facts of this case and that the Court should grant the AVO for the following reasons:⁵²

⁴⁹ [Courts of Justice Act](#), RSO 1990, c. C.43, s. 100.

⁵⁰ [Royal Bank of Canada v. Soundair Corp.](#), 4 OR (3d) 1 at para 16. (ONCA) [Elleway Acquisitions Limited v. 4358376 Canada Inc.](#), 2013 ONSC 7009 at para 31.

⁵¹ [Crown Trust Co et al v Rosenberg et al](#) (1986), 60 OR (2d) 87 at paras 83-84 (ONSC).

⁵² First Report at paras 82–88 and 91.

- (a) the Real Property was extensively marketed by an experienced brokerage through, among other things, MLS listing, direct broker outreach, electronic marketing campaigns and other advertising;
- (b) the Receiver is of the view that: (i) sufficient efforts were made to maximize the value of the Real Property; (ii) the sale process was robust, open, transparent, commercially reasonable, and appropriately considered the interests of all stakeholders; and (iii) the market was sufficiently canvassed;
- (c) parties that had an interest in the Real Property were given a reasonable opportunity to review the opportunity, conduct due diligence, and make an offer;
- (d) the Receiver is satisfied that the Transaction provides for the highest and best recovery available for the benefit of the stakeholders in the circumstances;
- (e) the Receiver had direct involvement in negotiating the terms and conditions of the Sale Agreement and believes that they are commercially reasonable;
- (f) the Sale Agreement is not conditional upon environmental remediation, and is subject only to customary closing conditions typical of transactions of this nature;
- (g) the Receiver does not believe that further marketing of the Real Property is likely to result in a more favourable outcome; and
- (h) BMO, the Debtors' senior secured creditor, supports the Transaction notwithstanding that it will suffer a shortfall.

The Sealing Order Should be Granted

49. The Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, held that a sealing order may be granted when: (a) an order is needed to prevent a serious risk to an important interest because reasonable alternative measures will not prevent the risk; and (b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.⁵³

50. In *Sherman Estate v. Donovan* (“*Sherman Estate*”), the Supreme Court of Canada held that a person asking a court to exercise discretion in limiting the ‘open court’ presumption must establish that: (a) court openness poses a serious risk to public interest; (b) the order sought is necessary to prevent the risk to the identified interest because reasonable alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁵⁴

51. The Confidential Appendices contain confidential and commercially sensitive information, including the appraisal of the Real Property, the summary of offers received during the sale process, the unredacted Sale Agreement (disclosing the purchase price and deposit amounts), the Environmental Reports and the Remediation Estimate.⁵⁵

52. Disclosure of the confidential and commercially sensitive information in the Confidential Appendices prior to closing of the Transaction poses a serious risk, as it could prejudice negotiations with prospective purchasers and undermine the Receiver’s ability to maximize value for stakeholders, if the Transaction does not close and the Real Property needs to be re-marketed.⁵⁶ There is no reasonable alternative to the sealing order in the circumstances.

⁵³ [Sierra Club of Canada v. Canada \(Minister of Finance\), 2002 SCC 41 at para 45.](#)

⁵⁴ [Sherman Estate v. Donovan, 2021 SCC 25 at para 38.](#)

⁵⁵ First Report at para 93.

⁵⁶ First Report at para 93.

53. The sealing request is narrowly tailored to the Transaction, as it is intended to remain in place only until completion of the Transaction or further order of this Court.⁵⁷ The Receiver is not aware of any stakeholder who would be prejudiced if such information is sealed.⁵⁸ The salutary effects of maintaining the confidential nature of the Confidential Appendices greatly outweigh the deleterious effects.

Interim Distribution Should be Authorized

54. Orders authorizing interim distributions are routinely granted by courts in insolvency proceedings, including receiverships.⁵⁹ In *GE Canada Real Estate*, Brown J. approved an interim distribution by a receiver, subject to the receiver maintaining sufficient reserves to complete the administration of the receivership, to maximize efficiency and avoid the need for further motions.⁶⁰

55. In *Re AbitibiBowater Inc.*, Justice Gascon considered a number of factors in deciding whether to approve an interim distribution under the *Companies Creditors Arrangement Act* that are equally applicable to a receivership proceeding. These included whether (a) the payee's security is valid and enforceable; (b) the amounts owed to the payee exceed the distribution; (c) the distribution would result in interest savings; and (d) whether the distribution will leave the estate with sufficient liquidity.⁶¹

56. The factors contemplated in *AbitibiBowater* are satisfied in the instant case. The Receiver has obtained a legal opinion from its counsel with respect to the validity of the security granted in favour

⁵⁷ First Report at para 94.

⁵⁸ First Report at para 95.

⁵⁹ [Re Windsor Machine & Stamping Ltd., 2009 CanLII 39772 \(ONSC\)](#) at para 13; [AbitibiBowater Inc., \(Re\), 2009 QCCS 6461](#) at paras 70-75 [*AbitibiBowater*]; [Ontario Securities Commission v. Bridging Income Fund L.P., 2022 ONSC 4472](#) at para 12; [GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc., 2014 ONSC 1173](#) at para 53 [*GE Canada Real Estate*]; [American General Life Insurance Company et al. v Victoria Avenue North Holdings Inc. et al., 2023 ONSC 3322](#) at para 16.

⁶⁰ *GE Canada Real Estate* at para 53.

⁶¹ *AbitibiBowater* at para 75.

of BMO under the laws of the Province of Ontario, concluding, subject to customary qualifications, assumptions and limitations included therein, that BMO's Security is valid and enforceable.⁶²

57. Based on the anticipated Net Proceeds of Sale, the Receiver expects that BMO will suffer a shortfall in respect of its secured indebtedness.⁶³ An interim distribution to BMO will reduce a portion of the indebtedness owed to BMO, limit the accrual of additional fees and interest in respect thereof, and result in material interest savings.⁶⁴

58. The Receiver is not aware of any creditor that would suffer prejudice as a result of the Interim Distribution.⁶⁵ Potential priority claims include municipal realty taxes relating to the Real Property that will be paid on closing of the Transaction, and a deemed trust claim asserted by the CRA in respect of HST in the amount of approximately \$8,657.23, which remains subject to further CRA review and audit.⁶⁶ As noted above, pending final confirmation of any potential priority claims that may arise, the Receiver intends to maintain the Priority Claims Reserve. The Receiver also intends to maintain such other reserves as the Receiver deems appropriate for the proper administration of the receivership estate. The Receiver has confirmed that, subject to the completion of the Transaction, there will be sufficient funds in the receivership estate to satisfy all priority payables (if any) notwithstanding the proposed Interim Distribution.⁶⁷

Authority to Assign 049 Ontario into Bankruptcy

⁶² First Report at para 98.

⁶³ First Report at para 113.

⁶⁴ First Report at para 113.

⁶⁵ First Report at para 112.

⁶⁶ First Report at paras 100–102.

⁶⁷ First Report at para 103.

59. Courts have authorized Court-appointed receivers to file assignments in bankruptcy on behalf of insolvent entities in appropriate circumstances.⁶⁸

60. It is well-established that a reversing of priorities may itself be a sufficient cause to justify the filing of a bankruptcy by a receiver.⁶⁹ The granting of such authority (i.e. to file an assignment in bankruptcy) may be appropriate even where one of the purposes in so doing is reversing the priorities in respect of a claim for HST advanced by the CRA.⁷⁰

61. Under section 49 of the BIA, an “insolvent person” may file an assignment in bankruptcy.⁷¹ Proof of at least one unpaid creditor is sufficient to establish the failure to meet liabilities generally as they fall due.⁷²

62. Under section 43 of the BIA, any creditor has the ability to file an application for a bankruptcy order against a debtor. In doing so, the creditor must show that their debt exceeds \$1,000 and that the debtor has committed an act of bankruptcy within the six months preceding the filing of the application, including ceasing to meet their liabilities generally as they become due.⁷³

63. In this case, the Receiver submits that an order authorizing the Receiver to assign 049 Ontario into bankruptcy is appropriate in the circumstances. As described in the First Report:

- (a) BMO has requested that the Receiver seek authorization to assign 049 Ontario into bankruptcy if necessary;

⁶⁸ [Royal Bank of Canada v. Gustin](#), 2019 ONSC 5370, at paras. 12 and 15; [Royal Bank of Canada v. Sun Squeeze Juices Inc.](#), 1994 CarswellOnt 266 at paras 6 and 10.

⁶⁹ [CIBC v. 1340182 Ontario Limited](#), 2024 ONSC 3658 at para. 14.

⁷⁰ [2403177 Ontario Inc. v. Bending Late Iron Group Limited](#), 2016 ONSC 199 at paras. 113 – 123.

⁷¹ BIA, s.2 “insolvent person”.

⁷² [Braich v. Clarke](#) 2023 BCCA 305 at para. 43

⁷³ BIA, s. 42(1)(j).

- (b) 049 Ontario is clearly insolvent insofar that, among other things, the value of 049 Ontario's debts exceeds its assets and 049 Ontario has ceased meeting its liabilities generally as they become due;
- (c) but for the stay of proceedings under the Appointment Order, BMO would be entitled to apply for a bankruptcy order;
- (d) 049 Ontario has no operating business and has no employees. The Receiver does not anticipate any CRA claim for unremitted employee source deductions; and
- (e) the CRA has advanced a deemed trust claim for HST, the priority of which would be nullified in the event of a bankruptcy so that the HST claim would rank equally with other unsecured creditors. A bankruptcy initiated to get the benefit of a priority reversal is not an improper use of the bankruptcy process.⁷⁴

The Court Should Approve the Fees and Disbursements

64. The Appointment Order provides that the Receiver and its counsel are to be paid their reasonable fees and disbursements, at their standard rates and charges, unless otherwise ordered by the Court on the passing of accounts.⁷⁵

65. The Receiver is seeking approval of the Court for the fees and disbursements of: (a) the Receiver for the period from January 13, 2025 to March 3, 2026; and (b) its legal counsel, Chaitons, for the period from December 15, 2024 to February 28, 2026. Both the Receiver's and Chaitons' accounts are verified by an affidavit.⁷⁶

⁷⁴ First Report at para 114.

⁷⁵ Appointment Order, *supra* note 47, at para 18; Appendix "A" to the First Report.

⁷⁶ First Report at paras 115-116; Appendix "O" and Appendix "P" to the First Report.

66. In determining whether to approve the accounts of a Court-appointed receiver and its counsel, the Court must consider the overall value contributed, taking into account the following factors: (a) the nature, extent and value of the assets; (b) the complications encountered; (c) the degree of assistance provided by the debtor; (d) the time spent; (e) the receiver's knowledge, experience and skill; (f) the diligence and thoroughness displayed; (g) the responsibilities assumed; (h) the results of the receiver's efforts; and (i) the cost of comparable services when performed in a prudent and economic manner.⁷⁷

67. The Receiver has reviewed the accounts of the Receiver's counsel and is of the view that the work described therein was carried out and was necessary, that the hourly rates charged are reasonable having regard to the nature of the services provided, and that such services were performed by counsel with the appropriate level of experience.⁷⁸

The Court Should Approve the First Report

68. The Court has the inherent jurisdiction to review and approve the activities of a court-appointed receiver where the receiver has met the objective test that it has acted reasonably, prudently and not arbitrarily.⁷⁹

69. Court approval allows the court officer to bring its activities before the court and present an opportunity to address stakeholders' concerns, while enabling the court to satisfy itself that the activities have been conducted in a prudent and diligent manner.⁸⁰

⁷⁷ [Bank of Nova Scotia v. Diemer, 2014 ONCA 851](#) at para 33.

⁷⁸ First Report at paras 115-117; Appendices "O" and "P" to the First Report.

⁷⁹ [Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd., 2014 BCSC 1855](#) at para 54.

⁸⁰ [Target Canada Co. \(Re\), 2015 ONSC 7574](#) at para 23.; [Triple-I Capital Partners Limited v 12411300 Canada Inc., 2023 ONSC 3400](#) at paras 65-66.

70. The activities of the Receiver have been reported to the Court and stakeholders in the First Report. Its activities were all necessary and undertaken in good faith in accordance with the Appointment Order, further to the best interests of the Debtors' stakeholders generally.

PART V – RELIEF SOUGHT

71. The Receiver respectfully recommends and requests that the Court grant the relief sought on this motion.

I certify the authenticity of every authority cited in the factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of March, 2026.



CHAITONS LLP

*Lawyers for the Court-Appointed Receiver, Rosen
Goldberg Inc.*

SCHEDULE "A"

LIST OF AUTHORITIES

Title	Pinpoints
<u>2403177 Ontario Inc. v. Bending Late Iron Group Limited, 2016 ONSC 199</u>	113-123
<u>Abitibowater Inc., (Re), 2009 QCCS 6461</u>	70-75
<u>American General Life Insurance Company et al. v Victoria Avenue North Holdings Inc. et al., 2023 ONSC 3322</u>	16
<u>Bank of Nova Scotia v Diemer, 2014 ONCA 851</u>	33
<u>CIBC v. 1340182 Ontario Limited et al., 2024 ONSC 3658</u>	14
<u>Crown Trust Co et al v Rosenberg et al, 60 OR (2d) 87</u>	83-84
<u>Elleway Acquisitions Limited v 4358376 Canada Inc, 2013 ONSC 7009</u>	31
<u>GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc., 2014 ONSC 1173</u>	53
<u>Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd., 2014 BCSC 1855</u>	54
<u>Ontario Securities Commission v. Bridging Income Fund L.P., 2022 ONSC 4472</u>	12
<u>RBC v Gustin, 2019 ONSC 5370</u>	12, 15
<u>Royal Bank of Canada v Soundair Corp, 4 OR (3d) 1</u>	16
<u>Royal Bank of Canada v. Sun Squeeze Juices Inc., 1994 CarswellOnt 266</u>	6, 10
<u>Sherman Estate v Donovan, 2021 SCC 25</u>	38
<u>Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41</u>	45
<u>Target Canada Co (Re), 2015 ONSC 7574</u>	23
<u>Triple-I Capital Partners Limited v 12411300 Canada Inc, 2023 ONSC 3400</u>	65-66

SCHEDULE "B"

STATUTORY AUTHORITIES

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Definitions

2 ***insolvent person*** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

.....

Acts of bankruptcy

42 (1) A debtor commits an act of bankruptcy in each of the following cases:

- (a) if in Canada or elsewhere he makes an assignment of his property to a trustee for the benefit of his creditors generally, whether it is an assignment authorized by this Act or not;
- (b) if in Canada or elsewhere the debtor makes a fraudulent gift, delivery or transfer of the debtor's property or of any part of it;
- (c) if in Canada or elsewhere the debtor makes any transfer of the debtor's property or any part of it, or creates any charge on it, that would under this Act be void or, in the Province of Quebec, null as a fraudulent preference;
- (d) if, with intent to defeat or delay his creditors, he departs out of Canada, or, being out of Canada, remains out of Canada, or departs from his dwelling-house or otherwise absents himself;
- (e) if the debtor permits any execution or other process issued against the debtor under which any of the debtor's property is seized, levied on or taken in execution to remain unsatisfied until within five days after the time fixed by the executing officer for the sale of the property or for fifteen days after the seizure, levy or taking in execution, or if any of the debtor's property has been sold by the executing officer, or if the execution or other process has been held by the executing officer for a period of fifteen days after written demand for payment without seizure, levy or taking in execution or satisfaction by payment, or if it is returned endorsed to the effect that the executing officer can find no property on which to levy or to seize or take, but if interpleader or opposition proceedings have been instituted with respect

to the property seized, the time elapsing between the date at which the proceedings were instituted and the date at which the proceedings are finally disposed of, settled or abandoned shall not be taken into account in calculating the period of fifteen days;

(f) if he exhibits to any meeting of his creditors any statement of his assets and liabilities that shows that he is insolvent, or presents or causes to be presented to any such meeting a written admission of his inability to pay his debts;

(g) if he assigns, removes, secretes or disposes of or attempts or is about to assign, remove, secrete or dispose of any of his property with intent to defraud, defeat or delay his creditors or any of them;

(h) if he gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts;

(i) if he defaults in any proposal made under this Act; and

(j) if he ceases to meet his liabilities generally as they become due.

.....

Bankruptcy application

43 (1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that

(a) the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and

(b) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

.....

Assignment for general benefit of creditors

49 (1) An insolvent person or, if deceased, the executor or administrator of their estate or the liquidator of the succession, with the leave of the court, may make an assignment of all the insolvent person's property for the general benefit of the insolvent person's creditors.

Sworn statement

(2) The assignment must be accompanied by a sworn statement in the prescribed form showing the debtor's property that is divisible among his or her creditors, the names and addresses of all his or her creditors and the amounts of their respective claims.

Filing of assignment

(3) The assignment made under subsection (1) shall be offered to the official receiver in the locality of the debtor, and it is inoperative until filed with that official receiver, who shall refuse to file the

assignment unless it is in the prescribed form or to the like effect and accompanied by the sworn statement required by subsection (2).

Appointment of trustee

(4) Where the official receiver files the assignment made under subsection (1), he shall appoint as trustee a licensed trustee whom he shall, as far as possible, select by reference to the wishes of the most interested creditors if ascertainable at the time, and the official receiver shall complete the assignment by inserting therein as grantee the name of the trustee.

Cancellation of assignment

(5) Where the official receiver is unable to find a licensed trustee who is willing to act, the official receiver shall, after giving the bankrupt five days notice, cancel the assignment.

Procedure in small estates

(6) Where the bankrupt is not a corporation and in the opinion of the official receiver the realizable assets of the bankrupt, after the claims of secured creditors are deducted, will not exceed five thousand dollars or such other amount as is prescribed, the provisions of this Act relating to the summary administration of estates shall apply.

Future property not to be considered

(7) In the determination of the realizable assets of a bankrupt for the purposes of subsection (6), no regard shall be had to any property that may be acquired by the bankrupt or devolve on the bankrupt before the bankrupt's discharge.

Where subsection (6) ceases to apply

(8) The official receiver may direct that subsection (6) shall cease to apply in respect of the bankrupt where the official receiver determines that

(a) the realizable assets of the bankrupt, after the claims of secured creditors are deducted, exceed five thousand dollars or the amount prescribed, as the case may be, or

(b) the costs of realization of the assets of the bankrupt are a significant proportion of the realizable value of the assets, and the official receiver considers that such a direction is appropriate.

Courts of Justice Act, RSO 1990, c C.43

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed. R.S.O. 1990, c. C.43, s. 100.

BANK OF MONTREAL

**-and- 1000038049 ONTARIO INC. and
2504715 ONTARIO INC.**

Applicant

Respondent

Court File No. CV-25-00734605-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding Commenced in Toronto

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