

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)
JUSTICE CAVANAGH)
MONDAY, THE 16th DAY
OF AUGUST, 2021

BETWEEN

CWB MAXIUM FINANCIAL INC.

Applicant

- and -

4231 SHEPPARD AVENUE EAST INC., ABU SEIFEIN BRIMLEY
PHARMA INC., ANOOP BRIGHTON PHARMACY INC., BLESS HUI
PHARMA INC., CAPITAL PHARMACY INC., JG WINDSOR INC., JM
WESTVIEW PHARMA INC., JUBILEE PROPERTY INVESTMENTS INC.,
MAPLE MEDI PHARMA INC., RIVER HILL PHARMACY LTD., SIGMA
HEALTHCARE INC., SJ EAST PHARMA INC., ST MARY COOKSVILLE
PHARMA INC., ST. MARY THEOTOKOS PHARMA INC., STONEY
CREEK PHARMA INC., TORONTO APOTHECARY PHARMA INC.,
WESTWAY HOLDINGS INC. and OLDE WALKERVILLE HOLDINGS INC.

Respondents

ORDER
(Appointment of Interim Receiver re: Capital Pharmacy Inc.)

THIS MOTION made by the Applicant for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing msi Spergel inc. ("**Spergel**") as interim receiver (in such capacity, the "**Interim Receiver**") without security, of all of the assets, undertakings and properties of Capital Pharmacy Inc.

(the “**Debtor**”) acquired for, or used in relation to businesses carried on by the Respondents, was heard, without notice, on August 13, 2021 by video conference.

ON READING the Affidavit of Edward Hopkinson sworn August 3, 2021 and the Supplemental Affidavit of Edward Hopkinson sworn August 6, 2021, and on hearing the submissions of counsel for the Applicant;

SERVICE

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 application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 47(1) of the BIA and section 101 of the CJA, Spergel is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties the Debtor acquired for, or used in relation to a business carried on by of the Debtor, including all proceeds thereof (collectively, the “**Property**”) until the earlier of:

- (a) the taking of possession by a receiver within the meaning of subsection 243(2) of the BIA, of the Property;
- (b) the taking of possession by a trustee in bankruptcy of the Property; or
- (c) a further Order of this Court.

INTERIM RECEIVER’S POWERS

3. THIS COURT ORDERS that the Interim 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 Interim Receiver is hereby expressly

empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to monitor the Debtor's receipts and disbursements, including, without limitation, the right to access all Records (as defined below), Client Records (as defined below) and other information, computers, data, electronic or cloud-stored data, databases, or documents relating to the Debtor's operations, including, without limiting the generality of the foregoing, having direct access to the Debtor's banking statements, records and online banking data;
- (b) to have access to the Debtor's premises at all times, without any requirement for prior notice;
- (c) to engage pharmacists, consultants, 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 Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to conduct examinations, under oath of any person with knowledge of the affairs of the Debtor, if deemed necessary by the Interim Receiver in its sole discretion;
- (e) to report to, meet with and discuss with such affected Persons (as defined below), including the Applicant, as the Interim Receiver deems appropriate on all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (f) to inquire into and report to the Applicant and the Court on the financial condition of the Debtor and the Property and any material adverse developments relating to the financial condition of the Debtor and/or the Property;

- (g) to report to the Court on any matter it deems appropriate;
- (h) to attend this Court to seek amendments to this Order as it deems necessary or desirable; and
- (i) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligation;

and in each case where the Interim 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 Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (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, including, but not limited to the Ontario College of Pharmacists, the Ministry of Health and Long-Term Care, the Ontario Drug Benefit Program and any insurance company (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Interim Receiver of the existence of any client records and prescription information ("**Client Records**"), books, documents, securities, contracts, orders, billing privileges, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, 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, subject to Paragraph 6A herein, provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim 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 Interim 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 Interim Receiver for the purpose of allowing the Interim 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 Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

6A. THIS COURT ORDERS that with respect to the Client Records, the Interim Receiver shall: (i) take all steps reasonably necessary to maintain the integrity of the confidential aspects of the Client Records; (ii) if necessary, appoint a pharmacist licensed and qualified to practice in the Province of Ontario to act as custodian (the "**Custodian**") for the Client Records; (iii) not allow anyone other than the Interim Receiver or the Custodian to have access to the Client Records; and (iv) allow the Debtor supervised access to the Client Records for any purposes required pursuant to the *Regulated Health Professions Act, 1991*, the *Pharmacy Act, 1991* or any other governing Ontario or Canadian statute that requires the Debtor, from time to time, to perform certain obligations.

ADDITIONAL DUTIES OF AND RESTRICTIONS ON DEBTOR

7. THIS COURT ORDERS that, the Debtor shall:
- (a) not sell, transfer, gift, convey or otherwise dispose of any Property, other than in the ordinary course of business, without the prior written consent of the Interim Receiver (other than amounts to pay down obligations owing to the Applicant);
 - (b) not make, or enter into any contract, amendment to contract or other agreement that involves, an expenditure greater than \$2,500 without the prior written consent of the Interim Receiver; and
 - (c) provide to the Interim Receiver, upon the request of and on or before the deadline reasonably required by the Interim Receiver, such reporting as may be required by the Interim Receiver in its sole discretion, including, without limitation, Records, Client Records, "Rx reports", financial condition, daily, weekly or monthly receipts and disbursements, inventory counts or lists, sales reports, patient lists, accounts payable and receivable, profit and loss statements, locations and listings of assets.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

11. 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 Debtor, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, claims processing services, payment processing services, payroll services, insurance, transportation services, utility or other services to the Debtor 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 Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the applicable Debtor’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 Interim Receiver in accordance with normal payment practices of the applicable

Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor. The Interim 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 Interim 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*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

14. THIS COURT ORDERS that nothing herein contained shall require the Interim 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 Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim 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 INTERIM RECEIVER'S LIABILITY

15. THIS COURT ORDERS that the Interim 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 Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

16. THIS COURT ORDERS that the Interim Receiver and counsel to the Interim 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.

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

18. 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 Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

19. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be

established in accordance with the Protocol with the following URL: www.spergelcorporate.ca/engagements.

20. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim 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 prepaid ordinary mail, courier, personal delivery or facsimile transmission to the applicable Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the applicable Debtor 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

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

22. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtor.

23. 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 Interim 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

24. THIS COURT ORDERS that the Interim 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 Interim 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.

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

26. 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 Interim 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.

27. THIS COURT ORDERS that the Interim Receiver, its counsel and counsel for the Applicant are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the applicable Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

CWB MAXIUM FINANCIAL INC.
Applicants

and **4231 SHEPPARD AVENUE EAST INC.** et al.
Respondents

Court File No: CV-20-006650853-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

ORDER

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