

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE *Dattilo*

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FRIDAY, THE 28th
DAY OF JUNE, 2019

BETWEEN:



BANK OF MONTREAL

Applicant

- and -

BOBCAYGEON SHORES DEVELOPMENTS LTD.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, and
Section 101 of the *Courts of Justice Act*, R.S.O. 1990. c. C-43

FEE APPROVAL, DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by msi Spergel inc. ("**Spergel**") in its capacity as the Court-Appointed receiver and manager (the "**Receiver**") of the undertaking, property and assets of Bobcaygeon Shores Developments Ltd. (the "**Debtor**") for an order (i) approving the activities of the Receiver as set out in the First and Final Report of the Receiver, dated June 18, 2019 and the supplement dated June 24, 2019 (the "**First Report**"); (ii) approving the fees and disbursements of the Receiver and its counsel; (iii) approving the distribution of the sale proceeds as described in the First Report; and (iv) discharging Spergel as Receiver of the Debtor; was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and the affidavits of the Receiver and its counsel as to fees (the "**Fee Affidavits**") and on hearing the submissions of counsel for the Receiver and counsel for Bank of Montreal, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Christel Paul sworn June 19re, 2019, filed:

1. THIS COURT ORDERS that the activities of the Receiver, as set out in the First Report, are hereby approved.
2. THIS COURT ORDERS that the interim statement of receipts and disbursements of the Receiver attached as Appendix "10" to the First Report is hereby approved.
3. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the First Report and the Fee Affidavits, are hereby approved.
4. THIS COURT ORDERS that the following distributions be and are hereby approved and the Receiver is authorized to make the following distributions (the "**Distributions**"):
 - (a) any amounts owed by the Debtor to creditors with valid encumbrances ranking in priority to the security held by the Bank of Montreal ("**BMO**") against the property bearing PIN 63137-0001 (LT) (legally described as PCL 14-1 SEC C10-VER; PT LT 14 CON 10 VERULAM PT 1 57R8056; KAWARTHA LAKES) so as to satisfy such amounts;
 - (b) any amounts owed on account of the Receiver's borrowings;
 - (c) any amounts owed to the Receiver and counsel for the Receiver on account of their fees and disbursements incurred as of the date of this Order and accrued to the date the Receiver files the Receiver's Certificate defined in paragraph 6 of this Order;
 - (d) any commission amount owed to CBRE Limited pursuant to the terms of the revised listing agreement between the Receiver and CBRE, dated April 12, 2019;
 - (e) all amounts due to BMO as of the date the Debtor's indebtedness to BMO is repaid; and
 - (f) once any amounts owing to CRA on account of priority claims and to any unsecured creditors, if any, have been determined and quantified by the Receiver using reasonable efforts and upon completion of the administration of the receivership estate, any surplus amounts remaining in the estate to the Debtor.

5. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Debtor or any part thereof and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor or any part thereof;

the Distributions shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation and shall, upon the receipt thereof by the individuals and entities listed in paragraph 4 of this Order, be free of all claims, liens, security interests, charges or encumbrances granted by or relating to the Debtor.

6. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 4 hereof, and upon the Receiver filing a certificate certifying that it has completed the other activities described in the First Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefits of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Spergel, in its capacity as Receiver.

7. THIS COURT ORDERS AND DECLARES that Spergel is hereby released and discharged from any and all liability that Spergel now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Spergel while acting in its capacity as

Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Spergel is hereby forever released and discharged from any and all liability relating to matters that were raised or which would have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 28 2019

PER / PAR:



Schedule A – Form of Receiver's Certificate

Court File No. CV-18-597299-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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- and -

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RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Wilton-Siegel of the Ontario Superior Court of Justice (the "**Court**") dated May 30, 2018, msi Spergel inc. ("**Spergel**") was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Bobcaygeon Shores Developments Ltd. (the "**Debtor**").

B. Pursuant to an Order of the Court dated June 28, 2019 (the "**Discharge Order**"), Spergel was discharged as Receiver of the assets, undertakings and properties of the Debtor effective upon paying the amounts set out in paragraph 4 of the Discharge Order and the Receiver filing with the Court a certificate confirming that the Receiver has completed the other activities described in the First Report.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER CERTIFIES that in accordance with paragraph 6 of the Discharge Order, the Receiver has paid the amounts set out in paragraph 4 of the Discharge Order and the Receiver has completed all other activities described in the First Report.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

msi Spergel inc., in its capacity as Court-Appointed Receiver of the undertaking, property and assets of Bobcaygeon Shores Developments Inc., and not in its personal capacity

Per: _____

Name: _____

Title: _____

BANK OF MONTREAL
Applicant

and

BOBCAYGEON SHORES DEVELOPMENTS LTD.
Respondent

Court File No. CV-18-597299-00CL

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PROCEEDING COMMENCED AT
TORONTO

FEE APPROVAL, DISTRIBUTION AND DISCHARGE
ORDER

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Appointed Receiver of Bobcaygeon Shores Developments
Ltd.