

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**BANK OF MONTREAL**

Applicant

- and -

**11977636 CANADA INC.**

Respondent

**SUPPLEMENT TO THE FIRST REPORT OF MSI SPERGEL INC.  
IN ITS CAPACITY AS THE RECEIVER OF  
11977636 CANADA INC.**

**June 9, 2025**

## Table of Contents

I.	APPOINTMENT AND BACKGROUND.....	1
II.	1197's APPEAL .....	1
III.	AVO MOTION MATERIALS.....	2
IV.	INFORMATION REQUESTS.....	2
V.	RECOMMENDATION .....	3

## **APPENDICES**

1. Notice of Motion for Leave to Appeal dated February 21, 2025
2. Correspondence between the Applicant's counsel and 1197's counsel between February 21, 2025 and May 13, 2025
3. Motion Record for Leave to Appeal dated May 13, 2025
4. Correspondence between the Receiver's counsel and 1197's counsel between February 27, 2025 and March 2, 2025

## **I. APPOINTMENT AND BACKGROUND**

1. This supplement to the First Report (“**Supplemental Report**”) is filed by msi Spergel inc. (“**Spergel**”) in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of 11977636 Canada Inc. (“**1197**”) in response to the responding materials delivered by 1197 on June 5, 2025.
2. All terms not otherwise defined herein, shall have the meaning ascribed to such terms in the First Report.

## **II. 1197’s APPEAL**

3. 1197 claims that it intends to appeal the Receivership Order dated February 11, 2025. On February 21, 2025, 1197 delivered a Notice of Motion for Leave to Appeal. Attached as **Appendix “1”** is a copy of the Notice of Motion for Leave to Appeal dated February 21, 2025.
4. 1197 expressly acknowledges that: (i) leave to appeal is required; and (ii) that the Receivership Order is not stayed. Since February 11, 2025, 1197 has not scheduled the hearing of its motion for leave to appeal or to stay the Receivership Order. The Receivership Order continues to be in full force and effect.
5. On April 23, 2025, after no further motion materials were delivered by 1197 in relation to its appeal of the Appointment Order, counsel for the Applicant wrote to counsel for 1197 advising that they assume 1197 had abandoned its appeal. Attached as **Appendix “2”** is a copy of the correspondence between counsel for the Applicant and counsel for 1197 between February 21, 2025 and May 13, 2025.

6. On May 13, 2025, approximately 3 months after the Appointment Order was signed, 1197 delivered its motion record for its appeal. Attached as **Appendix “3”** is a copy of 1197’s Motion for Leave to Appeal dated May 13, 2025.
7. Counsel for the Receiver was not served with 1197’s Motion for Leave to Appeal or Factum for Leave to Appeal, despite requesting to be served with any materials in relation to 1197’s appeal. Attached hereto as **Appendix “4”** is a copy of the correspondence between the Receiver’s counsel and 1197’s counsel between February 27, 2025 and March 2, 2025.

### **III. AVO MOTION MATERIALS**

8. On May 20, 2025, the Receiver served its motion record for this motion with a returnable date of June 3, 2025. Due to a filing issue, the Receiver served its motion record again on May 29, 2025 with a returnable date of June 10, 2025.
9. At no point in time did 1197 advise that it intended to respond to the Receiver.
10. On June 3, 2025, the Receiver served the affidavit of Antoinette DePinto along with the Receiver’s factum.
11. On June 5, 2025, 1197 delivered its responding materials.

### **IV. INFORMATION REQUESTS**

12. The Receiver understands that prior to the Receiver’s appointment, counsel for the Applicant requested that 1197 provide certain information regarding its proposed sale to Shoaib Imran, in trust (later assigned to 16582729 Canada Inc.), (the “**Pre- Receivership APS**”) including:
  - i. details about the marketing process undertaken;

- ii. a summary of offers;
  - iii. information about the buyer;
  - iv. any appraisals; and
  - v. evidence of priority payables.
13. In addition, after its appointment, the Receiver made certain inquiries to 1197 including:
- i. How long has the 652 Parkdale Ave. N, Hamilton, ON (the “**Hamilton Property**”) been listed for?
  - ii. How many offers were received?
  - iii. If additional offers were received, what was the purchase price and deposit for those offers?
  - iv. If additional offers were received, why was the purchaser selected?
  - v. What is 1197’s relationship with the purchaser, if any?
  - vi. What negotiations took place for the Hamilton Property?
  - vii. Was an independent broker used?
14. The Receiver did not receive a response to its inquiries.
15. The response eventually provided by 1197’s counsel was incomplete and unsatisfactory.

## **V. RECOMMENDATION**

16. For the reasons outlined in this Supplemental Report and the First Report of the Receiver dated May 16, 2025, the Receiver respectfully requests that the Court grant the relief sought on the Receiver’s motion.

Dated at Hamilton this 9 day of June, 2025.

**msi Spergel inc.**

solely in its capacity as the Court-appointed  
Receiver of 11977636 Canada Inc. and not in its personal  
or corporate capacity.

Per:



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Trevor B. Pringle, CFE, CIRP, LIT  
Partner

# APPENDIX 1



Court File No. CV 24-88321-0000

Court of Appeal file No.

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

BANK OF MONTREAL

Applicant

And

11977636 CANADA INC.

Respondent

(Moving Party)

APPLICATION UNDER Section 243 of Bankruptcy and Insolvency Act , R.S.C.  
1985, c.B-3, and Section 101 of the Courts of Justice Act, R.S.O. 1990, c.C.43

**NOTICE OF MOTION FOR LEAVE TO APPEAL**

The moving party/respondent 11977636 Canada Inc , will make a motion in writing to the Court of Appeal, pursuant to Rule 61.03.1 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194. The Court of Appeal will hear the motion in writing on a date to be fixed by the registrar after service of the Moving Party's motion record, factum and transcripts, if any, or on the filing of the Moving Party's reply factum, if any, whichever is earlier.

## PROPOSED METHOD OF HEARING:

The Motion is to be heard in writing under subrule 61.03.1(1)

## THE MOTION IS FOR:

1. An order, if necessary, to extend the time to serve and file the moving party's motion and factum to 30 days after the parties receive a signed, issued and entered order from The Honorable Justice Valente of the Ontario Superior Court of Justice.
2. An order granting the moving party leave to appeal to the Court of Appeal from the Order of The Honorable Justice Valente dated February 11, 2025, appointing msi Spergel Inc receiver over the assets of 11977636 Canada Inc (the "11977636 Receivership Order").
3. If the order for leave to appeal be granted:
  - (i) An order to stay the 11977636 Receivership Order pending appeal:
  - (ii) An order granting the moving party its costs of the motion.
  - (iii) Such further and other relief as to this Honorable Cour may seem just.

## BACKGROUND FACTS

4. The Respondent corporation obtained loans from the BMO banks secured by mortgages on two properties, (a) 5641 Nauvoo Road, Watford, Ontario, N0M 2S0 ("**Watford Property**") and 652 Parkdale Avenue North, Hamilton, Ontario, L8H 5Z, ("**The Hamilton Property**").
5. The loans were obtained in separate transactions. Default on the two loans occurred in or around July 2024. The Respondent made the decision to sell the properties, having obtained appraisal. Based on the appraisals, they determined the value of the properties were greatly in excess of indebtedness to the bank. S there were commercial properties, they took longer to market

but were ultimately sold. The Parkdale property was a firm sale with a closing date of February 28, 2025. The Water property was sold conditionally with a March 15, 2025, closing date. This information was communicated with the law firm representing the bank in order to seek a delay in their proposed enforcement proceedings so as to permit these sales to proceed without incident. The Respondent did not obtain the cooperation of the bank's representatives however, and they proceeded to bring proceedings before the court for an appointment of a receiver.

**THE GROUNDS FOR THE MOTION ARE:**

6. Pursuant to the decision of the Ontario Court of Appeal in *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282 ( CanLII), the appeal of a receivership order is not as of right and leave to appeal to the Court of Appeal is required.
7. 11977636 Receivership seeks leave to appeal the decision made by justice Valente on 11<sup>th</sup> February 2025 in respect of:
  - (a) An application brought by the Bank in Court File No. CV 24-88301 for an order appointing a receiver over 11977636 Canada Inc.
8. The proposed appeal raises an issue that is of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole: is prima facie meritorious: and will not unduly hinder the progress of the insolvency proceedings.
9. The only assets of 11977636 Canada Inc. are the sale of 5641 Nauvoo Road, Watford, Ontario, N0M 2S0 "Watford Property" and 652 Parkdale Avenue North, Hamilton, Ontario, L8H 5Z4.

The only step to be taken by M Spergel in the receivership a sale of the said properties.

  - (a) A stay of the" 11977636 "Receivership Order is appropriate pending appeal since
10. There is a serious issue to be determined on appeal;

11. the moving party would suffer irreparable harm if the stay were refused as it would lose the ability to continue the appeal without the consent and participation of SPERGEL and the balance of convenience favours the granting of a stay since the stay would have minimal adverse impact to BMO pending appeal whereas failure to grant a stay would end the appeal for 11977636 altogether.
12. Sections 182(2), 193 and 195 of the Bankruptcy and Insolvency Act; Rules 61.03.1(1), 61.16 (1), 63.02(1) of the Rules of Civil Procedure; and sections 6(1)(b), 6(2) of the Courts of Justice Act. -5- Background Facts and the Decision of Newbould J. (Note: These mirror the Background Facts in the Notice of Motion for Leave to Appeal in Court File No. CV-13-10331-00CL) 1. 2. 3. 4. Bridging provided financing to Sun Pac. Bridging assigned the loan to 852. 852 is a shell corporation.
13. The Borrower has a right in equity to redeem the real property which subject to the mortgage security, by repaying the loan before a sale of the property. The Owner retains the right to redeem until the sale of the property by the Mortgagee.
14. This equitable right of redemption may be exercised by a Mortgagor in respect of any mortgage and can neither be contracted out or waived. *Municipal Savings and Loan Corporation v. Wilson*, 1981. CanLII 2979 at Para. 7.
15. The equitable right of redemption is jealously guarded and protected in law.
16. The Supreme Court of Canada in *Petranick v. Dale* (1977, 2 S.C.R. 959) affirmed that the equitable right to redeem is so fundamental that it can only be extinguished after the granting of an absolute order conveying the title to the subject property.
17. Further in *Martin v. Miles*, 5 O.R. 404, cited with approval in *Scotia Mortgage Corporation v. Davidson Estate* (2009, CanLII 21497), it was stated that “any one person entitled to a share in the equity of redemption may insist upon paying off the whole mortgage debt and the Mortgagee is bound to convey to him the mortgaged premises.
18. Further, pursuant to the statutory provisions contained in s. 22 (1) (a) enables a Mortgagor in default and foreclosure or sale proceedings to exercise the right to redeem for a defined period.

19. This right is firmly established and in most common law provinces this right is supported where there is a willingness and apparent capacity to redeem and Mortgagors should be given the opportunity to do so. *Toronto Dominion Bank v. 1200382 Ontario Inc.* (2006) CanLII 33679.
20. The Courts are open to extending the redemption period if satisfied that there is equity in the property and a reasonable prospect of payment. *Canada Permanent Mortgage Corp v. Dan-Al Construction Co.* 1982 BCJ No. 2339 at para. 10 – 11 BCCA.
21. The test employed by the Court when asked to consider extending a redemption period under an order the Courts of all provinces and territories of Canada look to ascertain a reasonable prospect of the debtor paying the mortgage debt. *1103969 B.C. Ltd. v. 1069185 B.C. Ltd.*, 2019 BCCA 73 at para. 26.
22. “The test for an extension has long been established and is set out in *Canada Permanent Mortgage Corp v. Dan-Al Construction Co.* 1982 BCJ No. 2339 at para. 10 – 11 BCCA.
23. The Chambers Judge stated these tests accurately that there must be a reasonable prospect of payment and that the property must have sufficient value by way of security for the amount outstanding. In looking to the prospect of repayment, the Court will look to the evidence and not rely upon speculation as to what may be possible.”

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The endorsement of Justice Valente dated February 11, 2025
- (b) Transcript of the oral reasons for the order of Justice Valente.
- (c) Relevant portions of the record from the proceedings below; and
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

February 21<sup>st</sup>, 2025

**AVM Law Office**

Amarnath Misir 33 Elm Dr Unit 2510

Mississauga, Ontario L5B 4M2

Tel (416-837-3770)

Fax ( 905-241-7237)

Lawyer for the moving party 11977636 Canada Inc.

TO:

**AIRD & BERLIS LLP**

Brookfield Place

181 Bay Street, Suite 1800

Toronto, ON M5J 2T9

**Steven Graff** (LSO#31871V)

Tel: (416) 865-7726

Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Matilda Lici** (LSO#79621D)

Tel: (416) 865-3428

Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

BANK OF MONTREAL

- and -

**11977636 CANADA INC.**

Court File No.: CV 24-00088321000

Applicant

Respondent (Moving Party)

Court of Appeal File No

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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Hamilton

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**NOTICE OF MOTION FOR LEAVE TO APPEAL**

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**AVM LAW OFFICE**  
33 Elm Drive West, Suite 2510  
Mississauga, Ontario L5B 4M2

**Amarnath V. Misir**  
**Barrister and Solicitor**  
LSUC No.: 22143N

Email: [avmlawoffice@yahoo.ca](mailto:avmlawoffice@yahoo.ca)  
Mobile: (416)837-3770  
Fax: 905 291-7237

*Lawyer for the moving party 11977636  
Canada Inc.*

# APPENDIX 2



## Laura Culleton

---

**From:** Amarnath Misir <avmlawoffice@yahoo.ca>  
**Sent:** Tuesday, May 13, 2025 12:31 PM  
**To:** Steven L. Graff; Matilda Lici  
**Subject:** Re: Bank of Montreal v. 11977636 Canada Inc.  
**Attachments:** MOTION RECORD OF 11977636 CANADA INC.pdf



Good afternoon,

Please see attached the Motion Record of our client served on you pursuant to the Rules of Civil Procedure.

Kind regards

**Ruba A. for:**  
**Amarnath V. Misir**  
Barrister and Solicitor, Notary Public  
[AVM LAW OFFICE](#)  
33 Elm Drive West  
Suite 2510, Mississauga  
ON L5B 4M2

On Wednesday, April 23, 2025 at 03:09:16 p.m. EDT, Amarnath Misir <avmlawoffice@yahoo.ca> wrote:

Good afternoon Ms Lici,

Good afternoon Laura,

We recently received the Court File Number for the Appeal on April 15th which is: COA-25-OM-0101. We will serve you with our materials within the prescribed time in due course.

Kind regards

**Ruba A. for:**  
**Amarnath V. Misir**  
Barrister and Solicitor, Notary Public  
[AVM LAW OFFICE](#)  
33 Elm Drive West  
Suite 2510, Mississauga  
ON L5B 4M2

On Wednesday, April 23, 2025 at 02:26:05 p.m. EDT, Matilda Lici <mlici@airdberlis.com> wrote:

Good afternoon counsel,

Having received no further materials from you over two months later, we assume the debtor has abandoned its purported appeal.

Thanks,

**Matilda Lici**  
Associate

T 416.865.3428  
E [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

**Aird & Berlis LLP** | Lawyers

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If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

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**From:** Amarnath Misir <[avmlawoffice@yahoo.ca](mailto:avmlawoffice@yahoo.ca)>  
**Sent:** March 13, 2025 9:14 AM  
**To:** Steven L. Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Matilda Lici <[mlici@airdberlis.com](mailto:mlici@airdberlis.com)>  
**Subject:** Re: Bank of Montreal v. 11977636 Canada Inc.

Dear Ms. Lici,

We did file the Notice of Motion with the court, however, a court file number hasn't been assigned yet.

Kind regards

**Ruba A. for:**

**Amarnath V. Misir**  
Barrister and Solicitor, Notary Public  
[AVM LAW OFFICE](#)  
33 Elm Drive West  
Suite 2510, Mississauga  
ON L5B 4M2

On Wednesday, March 12, 2025 at 11:04:03 p.m. EDT, Matilda Lici <[mlici@airdberlis.com](mailto:mlici@airdberlis.com)> wrote:

Good evening counsel,

Please confirm whether you filed the Notice of Motion with the Court of Appeal, and whether the Court has assigned a court file number.

Thanks,

**Matilda Lici**  
Associate

T 416.865.3428  
E [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

**Aird & Berlis LLP**

Aird & Berlis LLP operates as a multi-disciplinary practice.

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error.  
If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

---

**From:** Amarnath Misir <[avmlawoffice@yahoo.ca](mailto:avmlawoffice@yahoo.ca)>  
**Sent:** February 21, 2025 3:58 PM  
**To:** Steven L. Graff <[sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)>; Matilda Lici <[mlici@airdberlis.com](mailto:mlici@airdberlis.com)>  
**Subject:** Re: Bank of Montreal v. 11977636 Canada Inc.

Please disregard the previous email and consider the attached Notice of Motion instead.

Kind regards

**Amarnath V. Misir**  
Barrister and Solicitor, Notary Public  
**AVM LAW OFFICE**  
33 Elm Drive West  
Suite 2510, Mississauga  
ON L5B 4M2

On Friday, February 21, 2025 at 03:52:21 p.m. EST, Amarnath Misir <[avmlawoffice@yahoo.ca](mailto:avmlawoffice@yahoo.ca)> wrote:

Good afternoon,

Please see attached the Notice of Motion for Leave to Appeal served upon you pursuant to the Rules of Civil Procedure.

Kind regards

**Amarnath V. Misir**  
Barrister and Solicitor, Notary Public  
**AVM LAW OFFICE**  
33 Elm Drive West  
Suite 2510, Mississauga  
ON L5B 4M2

# APPENDIX 3

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

BANK OF MONTREAL

Applicant  
(Respondent Party)

And

11977636 CANADA INC.

Respondent  
(Moving Party)

**PROCEEDING UNDER SUBSECTION 193(e) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, C. B-3**

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**MOTION RECORD OF 11977636 CANADA INC.**

---

May 13, 2025

**AVM LAW OFFICE**  
33 Elm Dr Unit 2510  
Mississauga, Ontario L5B 4M2

**Amarnath Misir**  
Tel (416-837-3770)  
Fax ( 905-241-7237)

Lawyer for the moving party  
11977636 Canada Inc.

TO:

**AIRD & BERLIS LLP**  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Steven Graff** (LSO#31871V)  
Tel: (416) 865-7726  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Matilda Lici** (LSO#79621D)  
Tel: (416) 865-3428  
Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

BANK OF MONTREAL

Applicant  
(Respondent Party)

And

11977636 CANADA INC.

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**PROCEEDING UNDER SUBSECTION 193(e) OF THE *BANKRUPTCY AND  
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**INDEX**

<b>TAB</b>	<b>DOCUMENT</b>	<b>PAGE</b>
1	Notice of Motion for Leave to Appeal of the Respondent (Moving Party)	4 - 10
2	Order of Justice M. Valente Transcript	12 - 29
3	Reasons for the Decision of Justice M. Valente	31 - 37
4	Factum including the following: - Schedule "A" - Schedule "B"	39 - 55
5	Notice of Application of the Applicant (Responding Party)	57 - 65
6	Affidavit of David Coutts	67 - 74
7	Affidavit of Taibah Chaudhary for the Respondent (Moving Party)	76 - 78

# TAB 1



09/Apr/2025

REGISTRAR / GREFFIER  
COUR D'APPEL DE L'ONTARIO

Court File No. CV-24-00088321-0000

Court of Appeal file No.

COA-25-OM-0101

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

BANK OF MONTREAL

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And

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(Moving Party)

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## PROPOSED METHOD OF HEARING:

The Motion is to be heard in writing under subrule 61.03.1(1)

## THE MOTION IS FOR:

1. An order, if necessary, to extend the time to serve and file the moving party's motion and factum to 30 days after the parties receive a signed, issued and entered order from The Honorable Justice Valente of the Ontario Superior Court of Justice.
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  - (i) An order to stay the 11977636 Receivership Order pending appeal:
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## BACKGROUND FACTS

4. The Respondent corporation obtained loans from the BMO banks secured by mortgages on two properties, (a) 5641 Nauvoo Road, Watford, Ontario, N0M 2S0 ("**Watford Property**") and 652 Parkdale Avenue North, Hamilton, Ontario, L8H 5Z, ("**The Hamilton Property**").
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**THE GROUNDS FOR THE MOTION ARE:**

6. Pursuant to the decision of the Ontario Court of Appeal in *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282 ( CanLII), the appeal of a receivership order is not as of right and leave to appeal to the Court of Appeal is required.
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  - (a) An application brought by the Bank in Court File No. CV 24-88301 for an order appointing a receiver over 11977636 Canada Inc.
8. The proposed appeal raises an issue that is of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole: is prima facie meritorious: and will not unduly hinder the progress of the insolvency proceedings.
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The only step to be taken by M Spergel in the receivership a sale of the said properties.

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10. There is a serious issue to be determined on appeal;

11. the moving party would suffer irreparable harm if the stay were refused as it would lose the ability to continue the appeal without the consent and participation of SPERGEL and the balance of convenience favours the granting of a stay since the stay would have minimal adverse impact to BMO pending appeal whereas failure to grant a stay would end the appeal for 11977636 altogether.
12. Sections 182(2), 193 and 195 of the Bankruptcy and Insolvency Act; Rules 61.03.1(1), 61.16 (1), 63.02(1) of the Rules of Civil Procedure; and sections 6(1)(b), 6(2) of the Courts of Justice Act. -5- Background Facts and the Decision of Newbould J. (Note: These mirror the Background Facts in the Notice of Motion for Leave to Appeal in Court File No. CV-13-10331-00CL) 1. 2. 3. 4. Bridging provided financing to Sun Pac. Bridging assigned the loan to 852. 852 is a shell corporation.
13. The Borrower has a right in equity to redeem the real property which subject to the mortgage security, by repaying the loan before a sale of the property. The Owner retains the right to redeem until the sale of the property by the Mortgagee.
14. This equitable right of redemption may be exercised by a Mortgagor in respect of any mortgage and can neither be contracted out or waived. *Municipal Savings and Loan Corporation v. Wilson*, 1981. CanLII 2979 at Para. 7.
15. The equitable right of redemption is jealously guarded and protected in law.
16. The Supreme Court of Canada in *Petranick v. Dale* (1977, 2 S.C.R. 959) affirmed that the equitable right to redeem is so fundamental that it can only be extinguished after the granting of an absolute order conveying the title to the subject property.
17. Further in *Martin v. Miles*, 5 O.R. 404, cited with approval in *Scotia Mortgage Corporation v. Davidson Estate* (2009, CanLII 21497), it was stated that “any one person entitled to a share in the equity of redemption may insist upon paying off the whole mortgage debt and the Mortgagee is bound to convey to him the mortgaged premises.
18. Further, pursuant to the statutory provisions contained in s. 22 (1) (a) enables a Mortgagor in default and foreclosure or sale proceedings to exercise the right to redeem for a defined period.

19. This right is firmly established and in most common law provinces this right is supported where there is a willingness and apparent capacity to redeem and Mortgagors should be given the opportunity to do so. *Toronto Dominion Bank v. 1200382 Ontario Inc.* (2006) CanLII 33679.
20. The Courts are open to extending the redemption period if satisfied that there is equity in the property and a reasonable prospect of payment. *Canada Permanent Mortgage Corp v. Dan-Al Construction Co.* 1982 BCJ No. 2339 at para. 10 – 11 BCCA.
21. The test employed by the Court when asked to consider extending a redemption period under an order the Courts of all provinces and territories of Canada look to ascertain a reasonable prospect of the debtor paying the mortgage debt. *1103969 B.C. Ltd. v. 1069185 B.C. Ltd.*, 2019 BCCA 73 at para. 26.
22. “The test for an extension has long been established and is set out in *Canada Permanent Mortgage Corp v. Dan-Al Construction Co.* 1982 BCJ No. 2339 at para. 10 – 11 BCCA.
23. The Chambers Judge stated these tests accurately that there must be a reasonable prospect of payment and that the property must have sufficient value by way of security for the amount outstanding. In looking to the prospect of repayment, the Court will look to the evidence and not rely upon speculation as to what may be possible.”

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The endorsement of Justice Valente dated February 11, 2025
- (b) Transcript of the oral reasons for the order of Justice Valente.
- (c) Relevant portions of the record from the proceedings below; and
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

February 21<sup>st</sup>, 2025

**AVM Law Office**

Amarnath Misir 33 Elm Dr Unit 2510

Mississauga, Ontario L5B 4M2

Tel (416-837-3770)

Fax ( 905-241-7237)

Lawyer for the moving party 11977636 Canada Inc.

TO:

**AIRD & BERLIS LLP**

Brookfield Place

181 Bay Street, Suite 1800

Toronto, ON M5J 2T9

**Steven Graff** (LSO#31871V)

Tel: (416) 865-7726

Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Matilda Lici** (LSO#79621D)

Tel: (416) 865-3428

Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

BANK OF MONTREAL

- and -

**11977636 CANADA INC.**

Court File No.: CV 24-00088321000

Applicant

Respondent (Moving Party)

Court of Appeal File No COA-25-OM-0101

---

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Hamilton

---

**NOTICE OF MOTION FOR LEAVE TO APPEAL**

---

**AVM LAW OFFICE**  
33 Elm Drive West, Suite 2510  
Mississauga, Ontario L5B 4M2

**Amarnath V. Misir**  
**Barrister and Solicitor**  
LSUC No.: 22143N

Email: [avmlawoffice@yahoo.ca](mailto:avmlawoffice@yahoo.ca)  
Mobile: (416)837-3770  
Fax: 905 291-7237

*Lawyer for the moving party 11977636  
Canada Inc.*

# TAB 2



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.

)

TUESDAY, THE 11<sup>TH</sup>

JUSTICE VALENTE

)

DAY OF FEBRUARY, 2025

)

BETWEEN:

**BANK OF MONTREAL**

Applicant



- and -

**11977636 CANADA INC.**

Respondent

**APPLICATION UNDER SUBSECTION 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**

**ORDER  
(appointing Receiver)**

**THIS APPLICATION** made by the Applicant for an Order pursuant to section 243(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. as receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 11977636 Canada Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including the real property municipally known as 5641 Nauvoo Road, Watford, Ontario, which is legally described in PIN 43063-0097 (LT) and the real properties municipally known as 652 Parkdale Avenue North, Hamilton, Ontario and

legally described in PIN 17292-0058 (LT) (the “**Real Properties**” and collectively, the “**Property**”) was heard this day at 45 Main Street East, Hamilton, Ontario, L8N 2B7 by videoconference.

**ON READING** the Affidavit of David Coutts sworn December 5, 2024 and the Exhibits thereto, the Supplementary Affidavit of David Coutts sworn January 13, 2025, and the Responding Affidavit of Taibah Chaudhary sworn February 10, 2025, and on hearing the submissions of counsel for the Applicant, counsel for the Respondent, and all other counsel listed on the counsel slip, no one else appearing for any other person on the service list, although duly served as appears from the affidavit of service of Daisy Jin sworn December 13, 2024 and on reading the consent of msi Spergel Inc. to act as the Receiver,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application 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 243(1) of the BIA and section 101 of the CJA, msi Spergel Inc. is hereby appointed Receiver, without security, of the Property of the Debtor, including the Real Properties, acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof.

#### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the 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 Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage 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 Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter

instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the 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 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 (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the 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 Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, 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 provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the 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 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 Receiver for the purpose of allowing the 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 Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of



the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE 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 Receiver except with the written consent of the 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 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 Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the 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 Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the 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 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 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, 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 Receiver, and that the Receiver shall be entitled to the continued use of the 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## **RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The 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 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*.

#### **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in

pursuance of the 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 RECEIVER'S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, including, but not limited to, any illness or bodily harm resulting from a party or parties contracting COVID-19, 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 Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the 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, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

### **FUNDING OF THE RECEIVERSHIP**

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## SERVICE AND NOTICE

25. **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 <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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: <https://www.spergelcorporate.ca/engagements/>.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the 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.

27. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel 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 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).

## **GENERAL**

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

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

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

31. **THIS COURT ORDERS** that the 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 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.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this Application, 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 Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. **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 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.

34. **THIS COURT ORDERS AND DIRECTS** that, as soon as practicable, the Land Registry Offices for the Land Titles Divisions of Wentworth (No. 62) and Lambton (No. 25) accept this Order for registration on title to the Real Properties described in **Schedule "B"** hereto.

35. **THIS COURT ORDERS** that this Order is effective from the date it is made and is enforceable without any need for entry or filing.



Issued and entered electronically by

**Rhondda  
Margetts**

Digitally signed by Rhondda  
Margetts  
Date: 2025.02.20 09:30:21  
-05'00'

Local Registrar  
45 Main St East  
Hamilton, ON  
L8N 2B7



## SCHEDULE "A"



## RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of 11977636 Canada Inc. (the "**Debtor**"), including the real property municipally known as 5641 Nauvoo Road, Watford, Ontario, which is legally described in PIN 43063-0097 (LT) and the real property municipally known as 652 Parkdale Avenue North, Hamilton, Ontario and legally described in PIN 17292-0058 (LT) (collectively, the "**Real Properties**"), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the 11<sup>th</sup> day of February, 2025 (the "**Order**") made in an action having Court file number CV-24-00088321-0000, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

msi Spergel Inc., solely in its capacity  
as Receiver of 11977636 Canada Inc., and not in  
its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE "B"**

**DESCRIPTION OF REAL PROPERTY**

5641 Nauvoo Road, Watford, Ontario, which is legally described in PIN 43063-0097 (LT), PT LT 18 CON 3 SER WARWICK PT 1, 25R5230; WARWICK; and

652 Parkdale Avenue North, Hamilton, Ontario, which is legally described in PIN 17292-0058 (LT), PART LOT 32 CONCESSION BROKEN FRONT SALTFLEET, PART 2 62R21646; CITY OF HAMILTON.

**BANK OF MONTREAL**  
Applicant

- and -

**11977636 CANADA INC.**  
Respondent

Court File No. CV-24-00088321-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**Proceedings commenced at Hamilton**

**ORDER**  
**(Appointing Receiver)**

**AIRD & BERLIS LLP**

Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Steven Graff** (LSO #31871V)

Tel: (416) 865-7726

Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Matilda Lici** (LSO#79621D)

Tel: (416) 865-3428

Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

*Lawyers for Bank of Montreal*

# TAB 3

SUPERIOR COURT OF JUSTICE

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

11977636 CANADA INC.

Respondent

R U L I N G   O N   M O T I O N

BEFORE THE HONOURABLE JUSTICE M. VALENTE  
on February 11, 2025, at HAMILTON, Ontario

APPEARANCES:

M. Lici

Counsel for the Applicant

S. Suleman

Counsel for the Respondent

(i)  
Table of Contents

SUPERIOR COURT OF JUSTICE

T A B L E   O F   C O N T E N T S

W I T N E S S E S

<u>WITNESSES</u>	Examination <u>in-Chief</u>	Cross- <u>Examination</u>	Re- <u>Examination</u>
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E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>ENTERED ON</u> <u>PAGE</u>
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Transcript Ordered: February 21, 2025  
Transcript Completed: February 21, 2025  
Notified Ordering Party: February 21, 2025

Bank of Montreal v. 11977636 Canada Inc.  
Ruling on Motion - February 11, 2025

TUESDAY, FEBRUARY 11, 2025

R U L I N G

5 VALENTE, J. (Orally):

All right counsel; this is my ruling with respect to the motion. The Bank of Montreal brings a motion for the appointment of MSI Spergel Inc. as receiver of the properties of the debtor corporation.

10 The debtor requests an adjournment to allow sufficient time to repay the indebtedness due in owing to the bank through a sale or refinancing of the two properties which are the subject of the Bank of Montreal's first priority charge.

15 The debtor requests an adjournment to March 4, 2025, in order to afford it an opportunity to sell and/or refinance the properties. I note that this matter was previously before Justice Parayeski on January 14, 2025, at which time my colleague adjourned the matter to today's date on a peremptory basis.

20 The debtor, through its counsel, has advised this Court that it is prepared to consent to the requested receivership on March 4, 2025, in the event that the debt is not liquidated by that date.

25 The debtor corporation does not deny that it is indebted to the bank, nor does it deny the bank's right to appoint a receiver as its primary lender

5 pursuant to the terms and conditions of the charges and general security agreement it gave to the bank in support of the outstanding indebtedness. The debtor simply wishes to have additional time to be in control of the process to liquidate its outstanding indebtedness to the bank.

10 Had this request been made four and a half months ago when the bank made demand, it would have, in my view, had more weight in the eyes of this Court. Instead, I find that, based on the record before me, the debtor showed no level, or very little level, of cooperation with the bank once the bank demanded payment on September 20, 2024.

15 I note in particular that the bank's offer of forbearance, which was made on October 30, 2024, was refused by the debtor without any further negotiation. Not only has the debtor made no payments since the bank's demand on September 20, 2024, but perhaps more importantly within the context of the motion before the Court today, the debtor has not provided the bank with information that any primary lender would be looking for in circumstances of a default on a loan in excess of \$2,000,000. For example, the debtor has not provided the bank, or did not provide the bank, and has not, based on the record before me, with any information with respect to income that might be generated from these properties. Equally important is the bank is in the dark concerning priority payables save and except for outstanding realty

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5 taxes that were disclosed in the debtor's recent affidavit. Furthermore, the bank has no information with respect to the marketing process that was undertaken by the debtor to realize the two offers that are currently on the table with respect to the Hamilton Parkdale Avenue property and the Watford property.

10 In all of these circumstances, I agree with the Bank of Montreal's position that it has little confidence in the debtor that it will be accountable to the bank and its other creditors, going forward.

15 In addition, the bank has little confidence that its outstanding indebtedness will indeed be liquidated by March 4, 2024 [sic], as proposed by the debtor.

20 Based on the record before me, I find that the bank's position is reasonable given the history of this matter and in particular, the debtor's past representation that the Hamilton property was to have been sold by today's date, and the recent position of the debtor that the Watford property is likely not to be sold, but is more likely, as of 25 last evening, to be refinanced.

30 It is also concerning and disconcerting to this Court that the debtor has not provided the bank with a statement of the proposed Hamilton Parkdale Avenue property's net sale proceeds, and any plan



to satisfy any residual deficiency that might arise from the proposed sale, and/or last-minute refinancing of the Watford property.

For all of these reasons, including the fact that I am satisfied based on the record before me that the debtor is insolvent, I find a receivership order should go. It is in the interest of all of the stakeholders that a court-appointed receiver, who is an officer of this court, assume the responsibility for the disposition of the debtor's assets, which may indeed include the completion of the Hamilton Parkdale Avenue Agreement of Purchase and Sale.

Accordingly, the receivership order shall go in the amended form to that which has been approved by the Commercial Court as proposed by the Bank of Montreal's counsel.

That is my decision.

\*\*\*\*\*

Certification

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

***Evidence Act***

I, ZENA NASSEREDDINE, certify that this document is a true and accurate transcript of the recording of *Bank of Montreal v. 11977636 Canada Inc.* in the Superior Court of Justice held at HAMILTON, Ontario taken from Digital Recording 4799\_608\_20250211\_093806\_\_10\_VALENTEMI.dcr.

February 21, 2025

*Zena Nassereddine*

Authorized Court Transcriptionist

647.995.4550

zenanassereddine@gmail.com

# TAB 4

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

BANK OF MONTREAL

Applicant  
(Respondent Party)

And

11977636 CANADA INC.

Respondent  
(Moving Party)

**PROCEEDING UNDER SUBSECTION 193(e) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, C. B-3**

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**FACTUM OF 11977636 CANADA INC.**

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The moving party/respondent 11977636 Canada Inc. will make a motion in writing to the Court of Appeal, pursuant to Rule 61.03.1 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. The Court of Appeal will hear the motion in writing on a date to be fixed by the registrar after service of the Moving Party's motion record, factum and transcripts, if any, or on the filing of the Moving Party's reply factum, if any, whichever is earlier.

**PART I - OVERVIEW**

1. This is an application to the Court of Appeal seeking leave to appeal the decision of the Application's Judge, Justice M. Valente made on February 11, 2025. The judge made an order appointing a receiver to take possession and control of two properties owned by 11977636 Canada Inc. (the 'debtor') pursuant to a contractual loan agreement with the

Bank of Montreal (“BMO”). The loan is secured by mortgage and subject to remedies as set forth in the contractual documents.

2. BMO’s position is that the appropriate remedy is the appointment of a receiver to secure the repayment of their principal monies advanced together with interest and all other financial obligations arising thereupon.
3. The default by the debtor occurred prior to September 20<sup>th</sup>, 2024, resulting in a letter of Demand for the payment of the loans and a Notice of Intention to enforce the security. Upon receipt of the said Letter of Demand and the Notice of Intention, the debtor requested that BMO should defer its enforcement of the contemplated proceedings in order to permit the Respondent to market and sell the subject properties with a view to totally discharging the debts thereby.
4. The debtor acknowledges the willingness of BMO to grant forbearance in the circumstances and did receive the draft of a forbearance agreement dated October 30<sup>th</sup>, 2024. However, the debtor did not execute the said agreement in the following month of November 2024 but kept updating the Applicant on the status of their marketing efforts as shown in the email correspondence of December 3, 2025, in the Supporting Affidavit of the Applicant. Nevertheless, shortly after, on December 9<sup>th</sup>, 2024, BMO filed a Notice of Application seeking a receivership order over the two properties.
5. The Application was heard on January 14<sup>th</sup>, 2025, in the Ontario Superior Court of Justice before the presiding Judge, Justice Parayeski. The debtor requested an adjournment to March 4<sup>th</sup>, 2025. However, the Judge fixed a new hearing date on February 11, 2025, on peremptory basis.

6. The reason for the request of the adjournment was to allow the sale and/or refinance of the two properties. The property located at 652 Parkdale Ave. N. Hamilton (“**Hamilton Property**”) was scheduled to be completed on February 28, 2025. The estimated amount to discharge the mortgage on the said property was approximately \$1,375,000.00. The resulted net proceeds of sale would have amounted to approximately \$400,000.00.
7. The second property located at 5641 Nauvoo Road, Watford (the “Watford Property”), it was sold conditionally with a closing date of March 15, 2025. In the event that the condition was not satisfied or waived the debtor would then have refinanced the property to obtain sufficient funds to pay out the balance of the indebtedness which would approximately \$750,000.00.
8. The hearing of the Notice of Application proceeded on February 11, 2025, before Justice M. Valente who granted the Applicant’s request for the receivership request.
9. The Judge ignored and neglected a consideration of material facts which would have led to a different outcome and settled the payment of BMO outstanding debts and resulted in a settlement of the payment of the outstanding BMO’ debt.

#### **PART 11 - SUMMARY OF FACTS**

10. The Debtor obtained a loan pursuant to the Credit Agreement with BMO. The bank registered a mortgage on title to the Hamilton Property in the amount of \$1,600,00.00, and a mortgage on the title to the Watford Property in the amount of \$1,325,000.00 on December 22, 2023. Both were in excess to the actual money advanced to the borrower. A General Security Agreement was registered in favour of BMO on December 14, 2023, with respect to both properties.

11. The Respondent Defaulted on the loan prompting the issuance of Demands Letters on September 20, 2024, on behalf of the Applicant. The amount of loan outstanding as of September 17, 2024, was represented to be \$2,042,243.48.
12. The Respondent communicated with the Applicant with a view to obtaining a forbearance. They requested a deferral of the Applicant's enforcement proceedings to permit them to market the properties in order to discharge the entire debt.
13. The draft of a Forbearance Agreement was provided to the Respondent for its review and consideration on October 30, 2024, with a view to its execution. During the month of November 2024, the Respondent was actively engaged with the marketing of both properties. They had hoped to secure a financially able purchasers willing to offer the best prices available in the market.
14. Though the Respondent had not executed the said Forbearance Agreement, the sole director/officer and shareholder of the debtor company (the Respondent) was confident that the Agreement for the sale of the Hamilton Property which she accepted on November 10, 2024, although conditional at that point in time, would be completed. It would have permitted the discharge of the debt relating to the said Property.
15. Counsel for the Respondent did communicate with the Applicant on multiple occasions to inform them that they were working on various proposals to secure funds to payout the indebtedness. That included efforts to market and sell the properties.
16. The Respondent entered into an Agreement of Purchase and Sale for the Hamilton Property for a sale price of 1,760,000.00 and a closing date of February 28, 2025. This contract was unconditional until January 8, 2025, when the said condition was waived. And the Watford

Property was sold conditionally for \$1,325,000.00 and the closing date was March 15, 2025.

17. The combined sale price for the two properties amounted to \$2,910,000.00 and BMO indebtedness was approximately \$2,100,000.00. The projected payout would have realized. The net balance of approximately \$780,000.00 would belong to the Respondent.
18. Despite this knowledge, BMO proceeded in an expeditious manner to file the Application shortly after on December 9, 2024.

### **PART III - ISSUES**

19. Whether the Application's Judge acted fairly and reasonably in the exercise of his discretion in considering the request of the Respondent to an adjournment and deferral of the hearing of the Applicant's Motion to appoint a receiver.
20. Whether it was just and convenient for the Application Judge to appoint a receiver in the circumstances.

### **PART IV- TEST**

21. The Respondent must seek leave to appeal under s. 193(e) of the BIA from a single judge of the Court of the Appeal prior to commencing the appeal.
22. Rule 6202(4)(b) of the *Rules of Civil Procedure* provides as follows: "There appears to the panel hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involve matters of such importance, that in the panels' opinion, leave to appeal should be granted."
23. The granting of the leave to appeal is a discretionary decision and the test for leave has been stated in the following manner in Ontario. Justice Blair in *Business Development Bank of Canada v Pine Tree Resorts Inc.* synthesized two lines of authority into a tripartite test.



24. The discretion must be exercised in a flexible and contextual way. The three factors for a court to consider in the proposed of appeal are as follows:

- a. The appeal is prima face meritorious. At a minimum, there should be an arguable case in favour of the appeal raising a reasonable possibility of success.
- b. Raises an issue of general importance to insolvency practice or the administration of justice generally. This comprises two factors namely, 1. whether the case will have significant precedential value that raises an issue of general importance to insolvency practice or the administration of justice generally, 2. whether there is something in the judgment that is contrary to law, is an abuse of power or other obvious error causing prejudice that for the sake of administration of justice requires that the appeal be heard *Farm Credit Canada v. Gidda* 2015 Carswell BC 1414 BCCA at para 18.

25. It is submitted that the proposed appeal of the Respondent is prima Face meritorious.

26. With respect to sub paragraphs b and c of the preceding paragraph, it is submitted that the Respondent is able to satisfy that the requirement where the approach to a comprehensive analysis of the bennet factors as approved in *Maple Trades Finance Inc. v. CY Oriental Holdings LTD* 2009 BCSC 15 at para 25, is demonstrated.

27. It is submitted that there are a number of errors of law on the face of the record made by the Judge in his oral reasons that warrant the intervention of the Court by granting leave to appeal.

## **PART V - ANALYSIS**

28. In order to consider the merits of appointing a receiver pursuant to the Application made on behalf of BMO, the Application's Judge must determine whether it is just and convenient to do so.

29. In order for such a determination be made, “the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto.” *Bank of Nova Scotia v. Freure Village on the Clair Creek*.
30. The settled approach to reaching a determination on whether it is appropriate to appoint a receiver is based on the Bennet factors approved in the *Maple Trade Finance Inc. v. CY Oriental Holdings LTD* 2009 BCSC 15 at para 25.
31. Out of the 16 factors listed, the Judge adverted primarily to one in arriving at his decision and that is the conduct of the Respondent. The Judge made certain findings related thereto that are not supported by evidence before him.
32. Referring to the Respondent’s request that the hearing be adjourned to March 4, 2025, the Judge in his oral reasons for the decision, stated the following: “Had this request been made four and a half months ago when the bank made demand, it would have in my view, had more weight in the eyes of this Court.”
33. This is a misapprehension on the part of the Judge having regard to the evidence contained in the Notice of Application in paragraph 13 and in the supporting Affidavit of David Coutts in paragraph 14. Where it is clearly shown that the Respondent did request the Applicant for a forbearance, after receiving the Demand Letter of September 20, 2024, and requested that the Applicant cease enforcement proceedings to allow the Respondent to market the properties or alternatively obtain refinances to pay in full the indebtedness. This is further confirmed by the Respondent’s Affidavit in paragraph 6.
34. The Judge further indicated “I note in particular that the bank’s offer of forbearance, which was made on October 30, 2024, was refused by the debtor without any further negotiation.” This observation by the Judge contradicts the statement made by him in the previous

paragraph where he concluded that no request was made by the Respondent to BMO after receiving the Demand Letter of September 20, 2024. It is clear from the Affidavit of the Applicant that the production of a Forbearance Agreement originated with the Respondent request after having received the said Demand Letter of September 20, 2024

35. Further, there was no refusal to sign the Forbearance Agreement nor was there any avoidance of negotiation by the Respondent. There is no evidence presented by either party to support the Judge's conclusion. The Judge was in serious error having arrived at a conclusion that has no evidentiary foundation.
36. No payments were made in response to the demand of the Applicant on September 20, 2024, but there was clear communication by the Respondent as to how the indebtedness would be paid off by the sale of the two properties as stated in paragraph 5 to 23 of the Supplementary Affidavit.
37. The Judge furthermore stated that the Applicant had no information concerning the income that might have been generated by the properties. The Applicant prior to the approval of the loan to the Respondent in December 2023, would have conducted its due diligence ascertaining that the Hamilton property which is a commercial property was tenanted and paragraph 7(d) of the Applicant's Affidavit of December 5, 2024, shows a General Assignments of rents and leases dated December 14, 2023, granted by the debtor in respect of the Hamilton property was registered on title on December 22, 2023.
38. Had the Judge directed his mind and adverted to these facts, he would have realized that this statement would be wholly inapplicable to the status of the Applicant's information on that subject matter. It is submitted that the Judge misapprehended the evidence as to

the Applicant's lack of information where no such evidence appears on the record with respect to the rents.

39. The Judge's observation that the Applicant had no information with respect to the marketing process of the properties was not a material consideration. That matter was dealt with in an exchange of communications between counsels of both parties on December 3, 2024, (paragraph 9 of the Supplementary Affidavit of the Applicant, where it was indicated that the marketing process was irrelevant at that time as an agreement for a sale, which was conditional until December 15, 2024, for the Hamilton Property had been concluded and that it was scheduled to close on February 28, 2025.
40. Notwithstanding this communication to the Applicant, the Applicant proceeded to file the Notice of Application on December 9, 2024.
41. The Judge made an observation that the Respondent was not trustworthy and could not fulfill his obligations. He stated the following: "I agree with the Bank of Montreal that it has little confidence in the debtor that it will be accountable to the bank and its other creditors going forward."
42. Not only did the Respondent advise the Applicant in a clear and transparent manner as to the steps that they were taking to payout the indebtedness, but their actions were directed to the achievements of the desired results. Had the Judge adverted to these matters that form the evidentiary record, which he neglected to consider or ignore entirely as they do figure in his reasons for the decision, he could not have made a finding that the Respondent was not trustworthy or that the Respondent could not fulfill his obligations.
43. It is a clear fact that the efforts of the Respondent to market the two properties had led to the signing of the Agreement of Purchase and Sale of which the Applicant was aware as it

appears in the evidentiary record in exhibit “A” and “B”. the observation of both the BMO and that of the Judge is at odds with the actual facts. It is submitted that in the circumstances that the Judges conclusion would be perverse.

44. The Judge ignored or failed to properly consider the evidence before him regarding the sale of the Hamilton property. He made a factually incorrect observation in stating “the debtor’s past representation that the Hamilton Property was to have been sold by today’s date. The Judge misinformed himself and was in error as to the date of completion of the sale of the Hamilton Property. the Agreement clearly stated that the completion date was February 28, 2025. No where did the Respondent state that the sale of the property would have been completed prior to February 11, 2025. Bases on that, the Judge drew a negative inference on the conduct of the Respondent and using that as a basis of the lack of confidence in the Respondent’s ability to fulfill its obligations.
45. Further, the Judge comments that it was concerning and disconcerting (). Had the Judge directed his attention to paragraph 12 of the Agreement of Purchase and Sale shown in Exhibit “A” to the Respondent’s Affidavit, he would have been acquainted with the procedure of the Applicant having to produce a mortgage statement for discharge purposes. On receiving the required amount from the proceeds by the vendor on closing, the debt on the Hamilton Property would have been paid out completely and the liability would have been reduced by approximately \$1, 375,000.00 leaving another \$800,000.00 outstanding.
46. Even though this information was stated in paragraph six in the Respondent’s Affidavit, the Judge never mentioned any of these facts, nor did he refer to them in his consideration of the factors affecting the determination for a just and convenient basis for the appointment of the receiver.

47. At no point in time or anywhere in the Applicant's Record was there any suggestions by the Applicant that the agreements for the sale of the two properties were anything other than bona fide agreements.
48. The Judge concluded that the Respondent is insolvent, "I am satisfied based on the record before me that the debtor is insolvent." He cited this as an additional basis for the making of the receivership order. This was based on the inability of the Respondent to make the monthly mortgage's installment payments due to cash flow issue.
49. The facts presented in paragraph six of the Respondent's Affidavit provides figures showing the anticipated proceeds to be received from the sale of the two properties which amount to \$2,910,000.0 and the bank's indebtedness over both properties amounts to approximately \$2,100,000.00.
50. The Judge further stated that it was in the best interests of the stakeholders that a court-appointed receiver. If the term of the stakeholders as used in the language of the Judge includes merely the creditors in this particular context represent only BMO, he would have disregarded the very Bennet factors which he had purported in his endorsement to have followed in arriving at his decision.
51. "It is submitted that the Judge must have regard to all of the circumstances, but in particular the nature of the property and the rights and interest of all parties in relation thereto." *Bank of Nova Scotia v. Freure Village on the Clair Creek*.
52. In keeping with the above noted principle, the parties must include the following persons: the security holder, namely BMO, the debtor, the purchaser under the Agreement of Purchase and Sale, Shoaib Imran in Trust, and the purchaser in the Watford property as 2508410 Ontario Ltd.

53. The circumstances, which is the sale of the property, an unconditional sale, and the other sale that were subject to conditions. Both purchasers are owners in equity of said properties. There is nothing in the Judge's reasons that indicate that their interests were considered. They are clearly not mentioned. The only consideration given was singularly to the only stakeholder, that is BMO.
54. The consequences of this to the debtor by the disregard of the interests of those parties is as follows: the decision to appoint a receiver operated as moratorium on sale of the Hamilton Property. It meant that the Respondent was precluded from carrying out any actions in relation to the property, namely, conveying the title of the said Property to the purchase and obtaining of the sale price to pay out the amount owing to the Applicant in full with respect to that property.
55. Further, the Respondent due to the said order was placed in breach of his contractual obligations towards the purchaser who was disappointed as a result of not obtaining what he had contracted with the Respondent under the Agreement of Purchase and Sale.
56. The same situation arose in respect of the Watford Property as the debtor could neither sell nor alternatively refinance that property to pay off the remaining portions of the indebtedness to the Applicant.
57. These two transactions had the stamp of certainty about them. The Applicant would have received its full entitlement by the middle of March at the latest had the appointment of the receiver not been made. The cost, which is an additional relevant factor, has now been increased by a huge amount having regard to the fact that now the receiver has to start from scratch in a market that has since changed having a downward trend.

58. Consequently, the decision of the learned judge, the end result would be the Respondent receiving considerably less funds than it would otherwise have received if the request for the extension until March 4, 2025, had been granted.
59. The request for an extension until March 4th, 2025, had it been granted, would have been in the best interest of all parties involved including the Court. The time frame between the date of the hearing on February 11, 2025, and the date of the extension was considerably short and would not have had a detrimental effect on the Applicant. It would have given an opportunity to the completion of the sale of the properties in order to pay off the indebtedness and would not have placed the Respondent in a vulnerable position.
60. It is submitted that the appointment of a receiver does not reflect the balance of convenience to the aforesaid parties. It reflects the convenience to the one stakeholder, namely BMO. It is also submitted that the principle in the Bennet factors that the appointment of a receiver should be granted cautiously was overlooked and appeared to have been done precipitately by contrast. It is submitted that having regard to the significantly flawed consideration of the Judge in the exercise of his discretion amounting to serious errors of law that leave to appeal should be granted. It is submitted that the proposed appeal is meritorious and raises an issue of general importance to insolvency practice or the administration of justice generally.

## **PART VI - ORDER REQUESTED**

- a. The Respondent respectfully requests this Honourable Court grant leave to appeal the order of the Application's Judge, Justice M. Valente, appointing a receiver MSI Spergel Inc. of the property of the debtor.



**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 13<sup>th</sup> date of May 2025.

Signed by:  
  
92A9875DBEAE4BE...

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**Amarnath Misir**

**AVM LAW OFFICE**  
33 Elm Dr Unit 2510  
Mississauga, Ontario L5B 4M2

**Amarnath Misir**  
Tel (416-837-3770)  
Fax ( 905-241-7237)

Lawyer for the moving party  
11977636 Canada Inc.

TO:

**AIRD & BERLIS LLP**  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Steven Graff** (LSO#31871V)  
Tel: (416) 865-7726  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Matilda Lici** (LSO#79621D)  
Tel: (416) 865-3428  
Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

1. *Business Development Bank of Canada v Pine Tree Resorts Inc. 2013 at para 28*
2. *Farm Credit Canada v. Gidda 2015 Carswell BC 1414 BCCA at para 18.*
3. *Maple Trades Finance Inc. v. CY Oriental Holdings LTD 2009 BCSC 15 at para 25.*
4. *Bank of Nova Scotia v. Freure Village on the Clair Creek, 1996.*

**SCHEDULE “B”**  
**LIST OF STATUTES**

**OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3**

**1. Rule 193**

Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

(e) in any other case by leave of a judge of the Court of Appeal.

***RULES OF CIVIL PROCEDURE, RRO 1990, REG 194.***

**1. Rule 62.02**

(4) Leave to appeal from an interlocutory order shall not be granted unless,  
(b) there appears to the panel hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in the panel’s opinion, leave to appeal should be granted.

**2. Rule 61.03**

(1) Where an appeal to the Divisional Court requires the leave of that court, the notice of motion for leave shall,

(a) state that the motion will be heard on a date to be fixed by the Registrar;

- (b) be served within 15 days after the making of the order or decision from which leave to appeal is sought, unless a statute provides otherwise; and
- (c) be filed with proof of service in the office of the Registrar, within five days after service. R.R.O. 1990, Reg. 194, r. 61.03

# TAB 5

CV-24-00088321-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**BANK OF MONTREAL**

Applicant

- and -

**11977636 CANADA INC.**

Respondent

**APPLICATION UNDER SUBSECTION 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**



**NOTICE OF APPLICATION**

**TO THE RESPONDENT**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

before a judge presiding over the Ontario Superior Court of Justice on Tuesday, January 14, 2025, at 10:00 a.m., via Zoom coordinates to be provided.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer,

serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 9, 2024

Issued by Alexandre Boulianne Digitally signed by Alexandre Boulianne  
Date: 2024.12.12 16:08:02 -05'00'

Local registrar

Address of  
court office 45 Main Street East  
Hamilton, ON L8N 2B7

**TO:** **11977636 CANADA INC.**  
18 Blossom Lane  
Hamilton, Ontario, L9C 2W6

## APPLICATION

**THE APPLICANT**, the Bank of Montreal (“**BMO**”), makes application for, among other things, an Order:

- a) if necessary, abridging the time for service and filing of this notice of application and the application record or, in the alternative, dispensing with and/or validating service of same, and declaring that this Application is properly returnable before the Court;
- b) appointing, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario), msi Spergel Inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, properties and undertakings (collectively, the “**Property**”) of the Respondent, 11977636 Canada Inc. (the “**Debtor**”), acquired for or used in relation to a business or businesses carried on by the Debtor, including, without limitation:
  - i) the real property municipally known as 5641 Nauvoo Road, Watford, Ontario, which is legally described in PIN 43063-0097 (LT) (the “**Watford Property**”); and
  - ii) the real property municipally known as 652 Parkdale Avenue North, Hamilton, Ontario and legally described in PIN 17292-0058 (LT) (the “**Hamilton Property**” and together with the Watford Property, the “**Real Properties**”); and
- c) such further and other relief as is just.



**THE GROUNDS** for the application are:

1. The Debtor is a federally-incorporated corporation, incorporated on March 26, 2020, and extra-provincially registered to do business in Ontario, with its stated registered office at 18 Blossom Lane, Hamilton, Ontario, L9C 2W6. Taibah Chaudhary is listed as the director and officer of the Debtor.

2. The Debtor is a holding company, whose only material assets are the commercial, income-generating Real Properties.

**Letter of Agreement and BMO's Security:**

3. The Debtor is indebted to BMO with respect to certain credit facilities (the "**Credit Facilities**") made available by BMO to the Debtor pursuant to and under the terms of a Letter of Agreement dated November 22, 2023 (as amended, replaced, restated or supplemented from time to time, the "**Credit Agreement**").

4. The Debtor's obligations to BMO pursuant to the Credit Agreement are guaranteed by Taibah Chaudhary pursuant to a limited personal guarantee dated December 14, 2023 up to the amount of \$2,060,000 (the "**Guarantor**" and together with the Debtor, the "**Credit Parties**").

5. As security for the Debtor's obligations to BMO, including, without limitation, under the Credit Agreement, the Debtor provided:

- a) a first-priority collateral charge/mortgage in favour of BMO, in the amount of \$1,325,000, in respect of the Watford Property (the "**Watford Charge**"), which was registered on title to the Watford Property on December 22, 2023 pursuant to instrument number LA306412;

- b) a General Assignments of Rents and Leases dated December 14, 2023, granted by the Debtor in respect of the Watford Property, which was registered on title to the Watford Property on December 22, 2023 pursuant to instrument number LA306413 and under the *Personal Property Security Act* (Ontario) (the “**PPSA**”);
- c) a first-priority collateral charge/mortgage in favour of BMO, in the amount of \$1,600,000, in respect of the Hamilton Property (the “**Hamilton Charge**”), which was registered on title to the Hamilton Property on December 22, 2023 pursuant to instrument number WE1716520;
- d) a General Assignments of Rents and Leases dated December 14, 2023, granted by the Debtor in respect of the Hamilton Property, which was registered on title to the Hamilton Property on December 22, 2023 pursuant to instrument number WE1716521 and under the PPSA; and
- e) a general security agreement dated December 14, 2023 (the “**GSA**”), which grants in favour of BMO, among other things, a security interest in any and all of the property, assets and undertakings of the Debtor, registration in respect of which was duly made pursuant to the PPSA,  
  
(collectively, the “**Security**”).

6. BMO is the first-ranking secured creditor over the Watford Property pursuant to the Watford Charge. BMO is the first-ranking secured creditor over the Hamilton Property pursuant to the Hamilton Charge.

7. The terms of the Watford Charge and the Hamilton Charge each provide that BMO is entitled to move for the appointment of a receiver of the respective Real Properties in the event of a default by the Debtor.

8. BMO is the only party to have registered an interest under the PPSA in respect of the Debtor.

9. The GSA granted by the Debtor allows BMO to appoint a receiver over the Debtor's Property upon the occurrence of a default.

**Defaults and Demands for Payment:**

10. The obligations of the Debtor in respect of the Credit Agreement are due and payable at the option of BMO upon BMO making demand for repayment. There have been one or more defaults under the Credit Agreement, including, without limitation, monetary defaults.

11. Following the defaults under the Credit Agreement, BMO made formal written demand on the Debtor and the Guarantor for payment of the indebtedness owed to BMO by letters dated September 20, 2024 (the "**Demands**"), which letter to the Debtor was accompanied by a notice of intention to enforce security (the "**BIA Notice**") delivered to the Debtor pursuant to subsection 244(1) of the BIA.

12. As set out in the Demands and the BIA Notice, a total of \$2,042,243.48 (exclusive of legal fees, disbursements and accruing interest) was owing by the Debtor and the Guarantor to BMO under the Credit Agreement as of September 17, 2024 (the "**Indebtedness**"). The Indebtedness continues to accrue.

13. Following delivery of the Demands and BIA Notice, counsel for the Debtor contacted BMO's counsel and requested that BMO forbear from taking steps to advance the within application pending discussion of the terms of a possible forbearance agreement to be entered into by BMO and the Credit Parties. On October 30, 2024, BMO circulated a draft form of the forbearance agreement setting out the terms on which BMO was prepared to forbear from taking steps to advance this application pending a refinancing or sale transaction to, *inter alia*, repay the Indebtedness.

14. The Credit Parties failed or refused to execute the proposed forbearance agreement. Despite repeated follow-ups, the Credit Parties have failed or refused to (a) repay the Indebtedness in full or (b) enter into any arrangements acceptable to BMO for the full repayment of the Indebtedness.

**The Rationale for the Appointment Order:**

15. The ten (10) day statutory period under subsection 244(1) of the BIA has now expired.

16. The provisions of the Security allow for the appointment of a Receiver over the Property of the Debtor upon default.

17. The principal amount of the Overdraft Lending Facility (“**ODL**”) granted under the Credit Agreement is \$60,000. The Debtor has allowed the ODL to be in excess of its limit since February 26, 2024. As at November 5, 2024, the ODL stood at \$105,000, which reflects an excess of \$45,000.

18. The appointment of a receiver is necessary for the protection of the interests of BMO as a secured creditor, alongside any other stakeholders.

19. The Receiver, if appointed, will be able to efficiently market the Real Properties for sale and maximize recovery for the stakeholders.

20. Spergel is a licenced insolvency trustee and has consented to act as Receiver if so appointed by the Court.

**General Grounds:**

21. Section 243 of the BIA.

22. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

23. Any applicable rules of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

24. Such further grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

25. The Affidavit of David Coutts sworn December 5, 2024, and all exhibits thereto;

26. The Consent of Spergel to act as Receiver; and

27. Such further and other evidence as counsel may advise and this Honourable Court may permit.

December 9, 2024

**AIRD & BERLIS LLP**

Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Steven Graff** (LSO #31871V)

Tel: (416) 865-7726

Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

**Matilda Lici** (LSO #79621D)

Tel: (416) 865-3428

Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

Lawyers for the Bank of Montreal

# TAB 6

Court File No. CV-24-00088321-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**BANK OF MONTREAL**

Applicant

- and -

**11977636 CANADA INC.**

Respondent

**APPLICATION UNDER SUBSECTION 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**

**SUPPLEMENTARY AFFIDAVIT OF DAVID COUTTS  
(sworn January 13, 2025)**

**I, DAVID COUTTS, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY AS FOLLOWS:**

1. I am a Senior Account Manager in the Special Accounts Management Unit of Bank of Montreal (the “**Bank**” or “**BMO**”). The Bank is a secured creditor of 11977636 Canada Inc. (the “**Debtor**”), and I am one of the persons at the Bank responsible for management of the Debtor’s accounts and credit facilities. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.



~

2. I swear this Affidavit in support of BMO's application for an Order, *inter alia*, appointing msi Spergel Inc. ("**Spergel**") as receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, properties and undertakings (collectively, the "**Property**") of the Debtor acquired for or used in relation to a business or businesses carried on by the Debtor, including, without limitation, the following real properties:

- (a) 5641 Nauvoo Road, Watford, Ontario, which is legally described in PIN 43063-0097 (LT) (the "**Watford Property**"); and
- (b) 652 Parkdale Avenue North, Hamilton, Ontario, which is legally described in PIN 17292-0058 (LT) (the "**Hamilton Property**" and together with the Watford Property, the "**Real Properties**").

3. Capitalized terms not otherwise defined herein shall have the meaning described in my Affidavit of December 5, 2024.

4. On October 30, 2024, counsel for the Bank delivered a draft forbearance agreement to counsel for the Respondent, which set out the terms on which the Bank was prepared to forbear from taking further action to enforce its Security. On October 31, 2024, counsel for the Respondent replied to advise:

Thanks, I am waiting on instructions, I don't know if I will have an answer by tomorrow, but will try

Might be Monday

5. A copy of counsels' email exchange is attached as **Exhibit "A"**.

6. On November 5, 2024, the Bank's counsel followed up with the Respondent's counsel to solicit comments on the draft forbearance agreement and the Respondent's position regarding same:

Good evening Saad,

I'm following up on the draft forbearance we circulated last week. Given the lack of responsiveness from the borrower and the persisting defaults, we require a reply by 5 pm tomorrow.

If we do not hear from you, we will seek instructions with respect to enforcement proceedings against the credit parties.

7. A copy of Matilda Lici's email dated November 5, 2024 is attached as **Exhibit "B"**.
8. There was no response to the Bank's counsel's email of November 5, 2024.
9. By way of an email dated December 3, 2024, a copy of which is attached as **Exhibit "C"**, the Respondent's counsel wrote to the Bank's counsel as follows:

Please note this property has been sold, with a closing date in February

The deal is still conditional until December 15<sup>th</sup>. We will advise once firm.

10. Following a request by the Bank's counsel for a copy of the agreement of purchase and sale, counsel for the Respondent forwarded an OREA Form 500 Agreement of Purchase and Sale dated November 9, 2024 and an OREA Form 570 Amendment to Agreement of Purchase and Sale – Commercial, both of which are attached as **Exhibit "D"**.

11. On December 9, 2024, counsel for the Bank wrote to the Respondent's counsel as follows:

Good afternoon Saad,

Have there been any further written amendments that support your comment that the deal is conditional until December 15<sup>th</sup>? If so, please forward.

As you know, the contemplated sale price is insufficient to repay the indebtedness owing to BMO. The Bank intends to move forward with its application to appoint a receiver over the borrower. Please let us know if you have instructions to accept service of same.

12. A copy of Matilda Lici's email of December 9<sup>th</sup> is attached as **Exhibit "E"**.

13. By way of email dated December 12, 2024, a copy of which is attached as **Exhibit “F”**, the Bank’s counsel followed up with the Respondent’s counsel as follows:

Good evening Saad,

I’m following up on my email below. Do you have instructions to accept service of the Bank’s application record on behalf of the borrower?

Please also advise if the borrower has received any offers on the Watford property and, if so, forward same to us.

14. On December 19, 2024, by email attached as **Exhibit “G”**, the Respondent’s counsel wrote to the Bank’s counsel as follows:

I believe there has been some development see email from my client. They will be selling two properties I am told which will payout the bank in full. Kindly advise if you will hold any further steps, I expect I can give you a full answer after the holidays.

One condition has been waived the other has 10 more days on it. 99 percent it will be waived. I’m trying to talk to the buyer to waive it sooner.

15. On January 9, 2025, by email attached as **Exhibit “H”**, the Respondent’s counsel wrote to the Bank’s counsel as follows:

We have been advised by our client that you have commenced an application against our client for receivership and there is a hearing on January 14<sup>th</sup>. We [sic]

We had previously advised your office that our client has sold the parkdale property, which will payout that mortgage in full. See confirmation of waiver of condition. The deal is firm and is closing on February 28<sup>th</sup>. Most of the funds will be paid out under that charge.

With respect to any remaining indebtedness, which I take to be about 400k more, our client will be refinancing the Watford property and you will be paid out from there. He will secure lending shortly on that.

16. A copy of the OREA Form 573 Waiver dated January 9, 2025 is attached as **Exhibit “I”**.
17. On January 10, 2025, by email attached as **Exhibit “J”**, the Bank’s counsel wrote to the Respondent’s counsel as follows:

In order to permit the Bank to assess its security position, please provide the following information and documents:

1. Recent (or historic) appraisals for each of the Parkdale property and the Watford property;
  2. A listing of all showings for each of the Parkdale property and the Watford property, indicating the dates on which the properties were viewed by interested parties;
  3. A summary of all offers received for the Parkdale property and the Watford property, if any;
  4. Are the properties currently vacant? If not, please provide documentation associated with any tenancy/lease;
  5. Evidence as to the status of priority payables (including real property taxes, and obligations to Canada Revenue Agency).
18. On January 10, 2025, by email attached as **Exhibit “K”**, the Respondent’s counsel responded by adding the answers in-line with each request:

In order to permit the Bank to assess its security position, please provide the following information and documents:

1. Recent (or historic) appraisals for each of the Parkdale property and the Watford property; **- what is the need for this for Parkdale – the property has sold firm and its closing in a month. For Watford the appraisal is attached.**
2. A listing of all showings for each of the Parkdale property and the Watford property, indicating the dates on which the properties were viewed by interested parties; **Watford is not being sold at the moment, but Parkdale is. Why do you require the listing history when it has already been sold?**
3. A summary of all offers received for the Parkdale property and the Watford property, if any; **- you have the APS and waiver for parkdale already. Watford has not sold, it will be refinanced.**
4. Are the properties currently vacant? If not, please provide documentation associated with any tenancy/lease; **- We will confirm with client.**
5. Evidence as to the status of priority payables (including real property taxes, and obligations to Canada Revenue Agency). **- we will confirm with client.**

19. On January 10, 2025, by email attached as **Exhibit “L”**, the Bank’s counsel wrote to the Respondent’s counsel as follows:

The Bank was not consulted with respect to the marketing and sale of the Parkdale property or the Watford property. We require the information sought to assess the Bank’s security position.

Please confirm whether the offer giving rise to the APS was the only offer for the Parkdale property.

I attach an updated payout statement, current as at today’s date.

20. On January 13, 2025, by email attached as **Exhibit “M”**, the Bank’s counsel followed up with the Respondent’s counsel as follows:

We have not heard from you following our request for information and documents. As I indicated in my email of Friday, January 10th, the Bank was not consulted with respect to the marketing and sale of the Parkdale property and, accordingly, has had no opportunity to exercise oversight or monitoring over the borrower.

The borrower has asked the Bank to agree to an adjournment of the receivership application without a fixed return date. The borrower has unilaterally sold the Parkdale property and hopes to be able to refinance the Watford property (again, without a fixed timeline). The Bank cannot assess and consider the borrower’s request for an adjournment based on the limited information provided to the Bank.

Please advise when we can expect to receive a response to our enquiries.

21. On January 13, 2025, by email attached as **Exhibit “N”**, the Respondent’s counsel responded as follows:

The payout date for both properties will be February 28<sup>th</sup>

You already have the firm sale for Parkdale, that is the closing date.

If you can adjourn your application to March, that would be appreciated. I am in trial tomorrow, so Mr. Sharma would be attending in my place if we need to speak to it, but it doesn’t make sense to proceed given the property has sold and our client should have financing soon.

The difference from the sale price to remaining balance is about 400-500k. Our client can easily get the financing for Watford property to pay this out, given the appraisal we sent

you, as the financing will be about 50% LTV, so we ask you to reconsider our position. Either our client will sell Watford or obtain financing, or possibly interim financing to ensure your client is paid out by February in the event the sale happens later.

I have been waiting on my client's information to respond to your remaining inquiries; however, since the hearing is tomorrow, we ask that you adjourn it on consent to a date in March.

22. At 12:08 p.m., the Respondent's counsel followed up with the following email, which is attached as **Exhibit "O"**:

As per our client there were other offers for parkdale; however, this was the highest and strongest offer for parkdale.

The properties are not vacant, they are all rented out, buyer is to assume tenants and commercial leases.

The property taxes are due; however, they will be paid on closing. There is nothing for CRA.

He is going to discharge the parkdale mortgage on February 28<sup>th</sup>, and remaining will be paid either through refinancing or sale of Watford. He will know more in a few days on status of Watford, whether he will sell or just refinance it.

Kindly confirm adjournment for tomorrow.

I am in trial, and Mr. Sharma also has to attend a triage court hearing at 9 am, so we would like this consent ironed out before.

23. At 4:27 p.m., by email attached as **Exhibit "P"**, the Bank's counsel responded to the Respondent's counsel as follows:

You have expressed several assurances in your emails, but based on the limited information we have been provided at this point, the Bank has concerns about the ability of the Respondent to repay the Bank's indebtedness in full by February 28, 2025.

You indicate that the offer giving rise to the APS expected to close on February 28<sup>th</sup> was the "highest and strongest offer" but, despite our repeated requests, have not provided evidence of those other offers.

You indicate that the properties are rented out, but we have yet to receive documentation evidencing those tenancies.

You indicate that property taxes will be paid on closing, but have not provided evidence of the quantum. You indicate there is nothing owing to CRA, but have not provided a screenshot of the Respondent's My CRA portal to evidence same. Accordingly, the Bank cannot assess what portion of the sale proceeds will be available to repay its indebtedness after the priority payables are paid.

We have not received any definitive assurance that the Bank's indebtedness will be repaid in full by February 28, 2025. We have received no evidence of refinancing efforts with respect to the Watford property.

**Under these circumstances, is your client prepared to provide a Consent to Receivership Order and Consent to Judgment by Taibah Chaudhary, such that if the Respondent does not repay the Bank's indebtedness in full by February 28, 2025, the Bank can move for a Receivership Order and Judgment on consent?**

If so, subject to instructions from the Bank, the parties can likely proceed on consent tomorrow morning. I cannot warrant that the Bank will consent, but I am prepared to recommend that course of action to the Bank if there is agreement from the Respondent.

24. At the time of swearing this affidavit, the Bank has not received a response from the Respondent.

**SWORN** remotely by **DAVID COUTTS**,  
via videoconference, stated as being located  
in the City of Toronto, in the Province of  
Ontario, before me at the City of Toronto, in  
the Province of Ontario, this 13<sup>th</sup> day of  
January 2025, in accordance with O. Reg  
431/20, Declaration Remotely.

DocuSigned by:

Matilda Lici

7CE576F4AA3D4CA...

Commissioner for Taking Affidavits

Signed by:

David Coutts

C39BD08266B743A...

**DAVID COUTTS**

# TAB 7



Court File No.: CV-24-00088321-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**BANK OF MONTREAL**

Applicant

- and -

**11977636 CANADA INC.**

Respondent

**RESPONDING AFFIDAVIT OF TAIBAH CHAUDHARY**

I, Taibah Chaudhary, of the City of Hamilton, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the director and authorized representative of the Defendant corporation herein and as such have knowledge of the matters herein deposed to and where I appear to rely on the information of others, I verily believe this information to be true.
2. I do not deny that the Respondent corporation owes a debt to the Applicant. Moreover, to payout the debt we sold two properties, (a) 652 Parkdale Ave. Nm Hamilton, ON L8H 5Z4, for \$1,760,000.00, (“**Hamilton Property**”) which transaction will close on 28 February 2025; and (b) 5641 Nauvoo Road, Watford, ON N0M 2S0, for \$1,150,000.00 (“**Watford Property**”) which transaction will tentatively close on or about 15 March 2025.
3. The Hamilton Property was sold in November 2024 and became firm sold in January 2025 which was then conveyed to the Applicant. Thereafter, in January 2025 the Watford Property was also sold, with a tentative closing of 15 March 2025, and the Applicant was informed that the Respondent by 15 March 2025 would be able to have sufficient funds to payout the Respondent’s indebtedness to the Applicant. The Watford property is sold conditional, and we are waiting on the condition fulfillment.

Furthermore, we have provided the Applicant with a copy of the Appraisal Report for the Watford Property, which further goes to show that even in the event the Watford Property sale does not firm up the Respondent will be able to refinance and be able to secure enough funds to payout the Applicant in full. We will be in a position to secure a commitment within the next few weeks depending on if the sale for Watford does not go through, and we expect to be able to close on the refinancing by latest March 15, 2025. The Respondent as a consequence of the sale of these properties, or sale of Hamilton Property and refinance of Watford Property, will have sufficient funds to payout the Applicant's indebtedness. Attached hereto and marked as Exhibit "A" is true copy of the Agreement of Purchase and Sale for the Hamilton Property. Exhibit "B" is true copy of the waiver of conditions for the Hamilton Property Attached hereto and marked as Exhibit "C" is true copy of the Agreement of Purchase and Sale for the Watford Property. Attached hereto and marked as Exhibit "D" is true copy of the Appraisal Report for the Watford Property.

4. However, the Applicant is not cooperative and taking into consideration the sale of the above 2 properties which will enable the Respondent to payout their indebtedness to the Applicant. Allowing the Applicant's application would be unjust as the circumstances of this case does not require the Respondent being forced into receivership given their consistent efforts to payout the indebtedness, their ability as a consequence of the sale of the above properties, with Hamilton Property firmly closing on 28 February 2025 and the Watford Property tentatively closing on 15 March 2025, nonetheless, these properties have enough equity to payout the Respondent's indebtedness with the Applicant. The appointment of a receiver is neither just or convenient in the circumstances. There are no other creditors other than the bank that is needing to be paid off.
5. I verily believe it is in the best interest of all parties that the Respondent not be forced into receivership but be given time until end of March 2025 to payout their indebtedness to the Applicant in full. We have also informed the Applicant, in the event they are not paid, we are fully prepared to consent to a receivership order, yet they have refused to entertain this consent that we are willingly providing to them.

6. We have through our counsel informed the Applicant on multiple occasions that we were working on securing the funds to payout the indebtedness, including by way of sale – refinance of the above properties. The Hamilton Property has been sold-firm with closing on 28 February 2025. Nonetheless, we were able to sell both the Hamilton Property and Watford Property for the total purchase price of \$2,910,000.00, which amount will be more than sufficient to payout the Respondent's debt with the Applicant. The bank's indebtedness across both properties is approximately \$2,100,000.00. The firm sale will generate a net amount of \$1,600,000.00 with a remaining balance of \$500,000.00. Given the Watford appraisal value of \$1,325,000.00 even if it is not sold, we will able to secure financing of less than 50% loan to value to payout the applicant in full for any remaining balance they may have on their mortgage. As the only secured creditor in this application, there is enough funds to ensure the applicant is paid in full without the court's intervention in appointing a receiver. Attached hereto and marked as Exhibit "E" is a true copy of the property tax bill for the Hamilton Property and Watford Property.
7. We verily believe that if the Respondent is given until about end of March 2025 they will be able to payout the Applicant. However, I believe that Applicant is acting unreasonably and trying to put the Respondent under Receivership when it is not necessary and while the Respondent has sold to above properties to get enough funds to payout the Applicant. The Parkdale property has sold firm, and the closing will be proceeding as scheduled.
8. I make this affidavit in response to the Applicant's Application and in support of the Respondent's position and for no improper purpose.

SWORN by video conference by Taibah )  
 Chaudhary, of the City of Hamilton, before me )  
 at the City of Mississauga in the Regional )  
 Municipality of Peel, on 10 February 2025 in )  
 accordance with O. Reg. 431/20, )  
 Administering Oath or Declaration Remotely. )

DocuSigned by:  
*Saad Suleman*  
 6A82D3GD66324D7...

A Commissioner etc.  
 Saad Suleman, LSO# 685930

Signed by:  
*Taibah Chaudhary*  
 511E535B1CE546A

TAIBAH CHAUDHARY

**BANK OF MONTREAL**

Applicant (Responding Party)

- and -

**11977636 CANADA INC.**

Respondent (Moving Party)

Court File No.: CV 24-00088321000

Court of Appeal File No.: COA-25-OM-0101

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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Hamilton

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**MOTION RECORD OF 11977636 CANADA  
INC.**

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**AVM LAW OFFICE**

33 Elm Drive West, Suite 2510  
Mississauga, Ontario L5B 4M2

**Amarnath V. Misir**  
**Barrister and Solicitor**  
LSUC No.: 22143N

Email: [avmlawoffice@yahoo.ca](mailto:avmlawoffice@yahoo.ca)

Mobile: (416)837-3770

Fax: 905 291-7237

***Lawyer for the Moving Party 11977636  
Canada Inc.***

# APPENDIX 4

## Laura Culleton

---

**From:** Amarnath Misir <avmlawoffice@yahoo.ca>  
**Sent:** Sunday, March 2, 2025 5:17 PM  
**To:** Laura Culleton  
**Subject:** Re: Bank of Montreal v. 11977636 Canada Inc.; Court File No. CV-24-00088321-0000

CAUTION: [External]

Dear Laura,

Noted. At this time, a date has not been assigned yet by the registrar.

Kind regards

**Amarnath V. Misir**  
Barrister and Solicitor, Notary Public  
[AVM LAW OFFICE](#)  
33 Elm Drive West  
Suite 2510, Mississauga  
ON L5B 4M2

On Thursday, February 27, 2025 at 01:22:50 p.m. EST, Laura Culleton <laurac@chaitons.com> wrote:

Hi Amarnath,

I am counsel for msi Spergel Inc. in the above-noted matter. I received the attached Notice of Motion from Matilda Lici.

Could you please send any additional appeal materials to my attention going forward? Could you also please advise whether a date has been booked for your motion for leave to appeal?

Best,



**Laura Culleton | Lawyer**  
T: 416.218.1128 E: [LauraC@chaitons.com](mailto:LauraC@chaitons.com)  
5000 Yonge St, 10th Floor, Toronto, ON, M2N 7E9  
[chaitons.com](http://chaitons.com)

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**BANK OF MONTREAL**

-and- **11977636 CANADA INC.**

Applicant

Respondent

Court File No. CV-24-00088321-0000

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON

**SUPPLEMENT TO THE FIRST REPORT OF THE  
RECEIVER**  
**(Motion returnable June 10, 2025)**

**CHAITONS LLP**

5000 Yonge Street, 10th Floor  
Toronto, Ontario M2N 7E9

**Laura Culleton (LSO No. 82428R)**

Tel: (416) 218-1128

Email: [laurac@chaitons.com](mailto:laurac@chaitons.com)

**Lawyers for the Receiver, msi Spergel inc.**