

Court File No. CV-25-00001158-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

BANK OF MONTREAL

Applicant

- and -

ADVANTAGE MACHINE & TOOL INC.

Respondent

APPLICATION UNDER SUBSECTION 243 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

FACTUM OF MSI SPERGEL INC., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF ADVANTAGE MACHINE & TOOL INC.

(Motion returnable February 12, 2026)

February 5, 2026

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Lawyers for msi Spergel Inc., the court-appointed Receiver of Advantage Machine & Tool Inc.

PART I - OVERVIEW

1. msi Spergel inc. is the court-appointed receiver (in that capacity, “**Receiver**”) of the assets, undertakings, and property (“**Property**”) of Advantage Machine & Tool Inc. (“**Advantage**” or “**Debtor**”). Advantage formerly carried on business as an engineering, integration, and manufacturing service provider, producing tools, dies, jigs, fixtures and providing custom machining, welding, and light services, as well as equipment repairs. Its clients included automotive, medical and food processing companies in Southwestern Ontario and the United States. Advantage operated from owned premises located at 155 Huron Road, Mitchell, Ontario (“**Real Property**”).
2. The Receiver files this factum in support of its motion for three orders:
 - (a) an order (“**Equipment AVO**”), *inter alia*, (i) approving the transaction (“**Equipment Sale Transaction**”) contemplated by the Agreement of Purchase and Sale dated November 27, 2025 (the “**Equipment Sale Agreement**”) between JB Fabrication Corp. and GHM Inc. (“**JB Fabrication**”) for a corporation to be assigned, as Purchaser, and the Receiver, as Vendor, for the purchase and sale of the Purchased Assets (as defined in the Equipment Sale Agreement), and (ii) granting necessary relief in relation thereto, including vesting in the Purchaser the Vendor’s right, title and interest in and to the assets described in the Equipment Sale Agreement, free and clear from any encumbrances;

(b) an order (“**Real Property AVO**” and, together with the Equipment AVO, “**Approval and Vesting Orders**”), *inter alia*, (i) approving the sale transaction (the “**Real Property Transaction**” and, together with the Equipment Transaction, the “**Transactions**”) contemplated by the Agreement of Purchase and Sale dated November 27, 2025 (the “**Real Property Sale Agreement**” and, together with the Equipment Sale Agreement, the “**Agreements**”) between JB Fabrication for a corporation to be assigned, as Purchaser, and the Receiver, as Vendor, for the purchase and sale of the Real Property; and (ii) vesting in the Purchaser the Vendor’s right, title and interest in and to the assets described in the Real Property Agreement, free and clear from any encumbrances, except for the Permitted Encumbrances (as defined in the Real Property Agreement); and

(c) an order (“**Ancillary Order**”), *inter alia*, (i) approving the Receiver’s first report to the court dated February 3, 2025 (“**First Report**”) and the activities of the Receiver described therein; (ii) approving the Receiver’s Interim Statement of Receipts and Disbursements as at January 12, 2026; (iii) approving the accounts of the Receiver and Miller Thomson for the periods to and including November 30, 2025 and December 31, 2025, respectively; (iv) sealing the Confidential Appendices to the First Report until the completion of the Transactions or further order of the court; and (v) authorizing and directing the Receiver to make a distribution to the Municipality of West Perth in the amount of \$22,090.85, plus any other

amounts accrued at the closing of the transaction, for the outstanding realty taxes in respect of the Real Property.

3. The Approval and Vesting Orders should be granted. The Agreements reflect the successful bid resulting from a sale process for the Debtor's entire business ("Sale Process") that was undertaken over approximately 2 months by the Receiver, with the assistance of Cushman & Wakefield Waterloo Region Ltd. ("Cushman"), and which presented the opportunity to purchase the Property to over 425 parties. The Sale Process satisfies the *Soundair* principles articulated by the Court of Appeal for Ontario, which the court must consider when a receiver seeks approval of a material sale transaction.
4. The Ancillary Order should be granted. MMA has acted responsibly and carried out its activities in a manner consistent with the provisions of its Appointment Order (defined below); the professionals' fees described in the fee affidavits appended to the First Report ("Professionals' Fees") are fair and reasonable in the circumstances and reflect value for service; sealing the Confidential Appendices will protect an important commercial interest – namely the integrity of any future sale process should the Transactions fail to close; and the Municipality of West Perth has a first priority entitlement to the proceeds of the Real Property Transaction.

PART II - SUMMARY OF FACTS

5. Capitalized that are otherwise not defined herein shall have the meaning given to them in the First Report.

6. The factual background to this motion is fully described in the affidavit of Dave Coutts sworn June 27, 2025, found at Tab 2 of the application record initiating this proceeding, and the First Report. The facts necessary for the determination of this motion are set out below.
7. The order of Justice Smith, dated July 24, 2025, appointing the Receiver (“**Appointment Order**”) empowers the Receiver to market and solicit offers for the Property and negotiate the terms and conditions of sale.¹
8. The Property is comprised primarily of the Real Property and the Debtor’s equipment (“**Equipment**”).
9. After obtaining and reviewing professional appraisals for the Equipment and the Real Property, the Receiver determined that *en bloc* sale of the Real Property with the Equipment was most likely to result the best recovery.²
10. After preparation of marketing materials, the marketing and sale efforts under the Sale Process ran from September 8, 2025 to October 30, 2025 bid deadline (“**Bid Deadline**”).³ During this interval, 425 parties were given notice of the opportunity, ten parties (“**Interested Parties**”) executed confidentiality agreements, and all ten Interested Parties accessed the data room and conducted a site tour of the Debtor’s facility.⁴

¹ Appointment Order, para. 3(j).

² First Report, Motion Record Tab 2, paras. 22 and 25.

³ First Report, *supra* note 2, para. 33 and 39.

⁴ First Report, *supra* note 2, para. 34 and 37-38.

11. Three bidders submitted bids at the Bid Deadline. Two bidders made *en bloc* offers and one bid for the Equipment only.⁵ The Equipment-only bid was materially lower in value than the *en bloc* offers and did not include a deposit. Of the *en bloc* offers, one featured a higher purchase price than the JB Fabrication offer, but was conditional on an environmental site assessment, satisfactory to the buyer at its sole discretion, and the accompanying deposit was lower than JB Fabrication's deposit. JB's Fabrication's bid was effectively unconditional.⁶
12. After assessing all bids received against the following criteria, the Receiver determined that JB Fabrication's bid was the superior bid:
 - (a) the overall consideration offered, and proceeds that would be realized by creditors;
 - (b) the consideration offered for the Real Property, relative to the Real Property appraisals;
 - (c) the proposed conditions, if any;
 - (d) the effect of the transactions on all stakeholders;
 - (e) the counterparties to the proposed transactions, including their reputation and financial wherewithal;
 - (f) transaction costs;

⁵ One bidder also submitted an auction proposal for the Equipment prior to the Bid Deadline (no deposit accompanied the bid).

⁶ First Report, supra note 2, para. 39; Confidential Appendices Brief, Appendix 5.

- (g) the speed and certainty of closing; and
- (h) the closing and post-closing services required of the Receiver.⁷

13. Following negotiations with JB Fabrication, the Receiver entered into the Agreements.

14. The Agreements are appended to and summarized in the First Report. In short, the Equipment Sale Agreement describes a transaction for substantially all of the Debtor's Equipment (not including leased Equipment) and the Real Property Sale Agreement describes a transaction for the Real Property; both are all-cash transactions, on an "as-is, where-is" basis, with minimal conditions to closing. The outside closing date under each agreement is May 27, 2026.⁸

PART III - STATEMENT OF ISSUES

15. There are two issues before this Honourable Court:

- (a) whether this Court should grant the Approval and Vesting Orders; and
- (b) whether this Court should grant the Ancillary Order.

The Receiver respectfully submits that the answer to both issues is "yes".

PART IV - LAW AND ARGUMENT

A. THE APPROVAL AND VESTING ORDERS SHOULD BE GRANTED

16. The Appointment Order empowers and authorizes the Receiver "...to apply for any vesting order or other orders necessary to convey the Property or any part or parts

⁷ First Report, supra note 2, para. 40.

⁸ First Report, supra note 2, para. 44.

thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property.”⁹

17. Courts will generally defer to a court-appointed receiver’s expertise in reviewing a sale and will not second-guess their recommendation absent exceptional circumstances.¹⁰ To do otherwise would “lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval” and would weaken the role and function of the receiver and lead to “immensely damaging results to the disposition of assets by court-appointed receivers.”¹¹
18. The Court of Appeal for Ontario in *Royal Bank of Canada v Soundair Corp*¹² articulated the factors to be applied by the Court when considering a motion by a court officer to approve the sale of property (*Soundair* involved the sale of property by a receiver).
19. The *Soundair* factors are:
 - (a) whether sufficient effort has been made to obtain the best price and that the receiver has not acted improvidently;
 - (b) the efficacy and integrity of the process by which offers have been obtained;
 - (c) whether the interests of all parties have been considered; and

⁹ Appointment Order, paragraph 3(l).

¹⁰ *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375, at para 15.

¹¹ *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) [*Soundair*].

¹² *Soundair*, *supra* note 11.

(d) whether there has been unfairness in the working out of the process.¹³

(i) The Soundair factors are satisfied in this case

20. *The receiver has made sufficient effort to obtain the best price for the Property and has acted in good faith and with due diligence.* The Transactions results from eight-week Sale Process and had the benefit of a sophisticated real estate advisor. Over 425 parties were given notice of the opportunity; ten Interested Parties executed confidentiality agreements and accessed the data room and conducted a site tour.

21. *The Sale Process was effective and uncompromised.* The result of the process speaks for itself. As illustrated in the unredacted marketing summary,¹⁴ the Sale Process generated four bidders. No stakeholder has raised any issue with the Sale Process.

22. *The Receiver has considered the interests of all parties.* In *Soundair*, the Court of Appeal stated that “[i]t is well established that the primary interest [to be considered] is that of the creditors of the debtor.”¹⁵ When evaluating the bids, the Receiver considered the factors listed at paragraph 12 above; the application of these factors lead the Receiver to the conclusion that JB Fabrication’s bid maximized the probability of a recovery for creditors. The Debtor’s senior secured creditor, the Bank of Montreal (“**BMO**”), agrees with this conclusion and supports approval of the Transactions.

¹³ *Soundair*, *supra* note 11.

¹⁴ *Soundair*, *supra* note 11.

¹⁵ *Soundair*, *supra* note 11.

23. *There has been no unfairness in the Sale Process.* In *Soundair*, the Court of Appeal stated in relation to this factor, “[a]s a general rule, I do not think it appropriate for the court to go into the minutia of the process or of the selling strategy adopted by the receiver. However, the court has a responsibility to decide whether the process was fair.” The Sale Process before this court was fair: the receiver treated all Interested Parties equally; the process was run for a period sufficient to permit all Interested Parties to conduct a site tour; the Receiver accepted both *en bloc* and Equipment-only bids; and all bids received were substantively considered by the Receiver – none were rejected based on technical grounds.

24. Considering the foregoing, the Receiver believes that the Transactions represent the highest and best outcome from the Sale Process and maximizes value for the Debtor’s stakeholders.¹⁶

B. THE ANCILLARY ORDER SHOULD BE GRANTED

25. The Receiver is seeking, through the Ancillary Order:

- (a) approval of the First Report, and the conduct of the Receiver described therein;
- (b) approval of the accounts of the Receiver and its legal counsel Miller Thomson;

¹⁶ First Report, *supra* note 2, paras. 48-52.

- (c) sealing of the Confidential Appendices to the First Report until the earlier of closing of the Transactions or further order of the court; and
- (d) approval of a distribution from the Real Property Transaction sale proceeds to the Municipality of West Perth in respect of outstanding property taxes.

(i) The First Report and the conduct and activities of the Receiver described therein should be approved

26. In *Target Canada Co., Re*, Morawetz, RSJ (as he then was) stated that a request to approve a Monitor's report "is not unusual"¹⁷ and that "there are good policy and practical reasons" to do so; a motion to approve a Monitor's report achieves the following policy and practical objectives:

- (a) brings the Monitor's activities before the court;
- (b) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (c) enables the court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (d) provides protection for the Monitor not otherwise provided by the CCAA; and
- (e) protects the creditors from the delay and distribution that would be caused by re-litigation of steps previously taken and indemnity claims.

¹⁷ *Target Canada Co. (Re)*, 2015 ONSC 7574 [Target]; *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161 at para 15 [Hanfeng].

27. In *Hangfeng Evergreen Inc., Re*, Myers J., held that the same policy and practical considerations apply when considering approval of a receiver's conduct.¹⁸
28. The Receiver submits that it is appropriate to approve the First Report, and the conduct described therein. The Receiver has acted responsibly and carried out its activities in a manner consistent with the provisions of the Appointment Order. No party opposes approval of the First Report and the conduct described therein.

(ii) The accounts of the Receiver and Miller Thomson should be approved

29. Pursuant to paragraph 18 of the Appointment Order, the Receiver and its legal counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 19 of the Appointment Order, the Receiver and its counsel are required to pass their accounts.
30. In approving the accounts of the Receiver and its legal counsel, the compensation sought must be fair and reasonable having regard to all relevant factors including but not limited to the following:
 - (a) the nature, extent and value of the assets;
 - (b) the complications and difficulties encountered;
 - (c) the degree of assistance provided by the debtor;

¹⁸ *Target*, *supra* note 17; *Hanfeng*, *supra* note 17, at para 15; *Laurentian University of Sudbury*, 2022 ONSC 5850.

- (d) the time spent;
- (e) the receiver's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results of the receiver's efforts; and
- (i) the cost of comparable services when performed in a prudent and economical manner.¹⁹

31. In *Laurentian University*, Chief Justice Morawetz held that the role of the court on a motion to pass accounts is to evaluate them on based on the “overriding principle of reasonableness.” The overall value of the services provided is the predominant consideration in assessing the reasonableness of the accounts. The court does not engage in a docket-by-docket assessment of the accounts, as minute details of each element of the professional services may not be instructive when viewed in isolation. The focus on the fair and reasonable assessment should be on what was accomplished.²⁰

32. The Receiver seeks approval of the Professionals' Fees as set out in the fee affidavits appended to the First Report.

¹⁹ *Bank of Nova Scotia v Diemer*, 2014 ONCA 851, para. 33.

²⁰ *Laurentian University, Re*, Endorsement dated May 18, 2022 (2022 ONSC 2927), para. 9.

33. The Receiver's fees are \$252,669.86 and Miller Thomson's fees are \$15,773.52 (in each case, inclusive of all applicable disbursements and taxes).²¹
34. The Receiver respectfully submits that the Professionals' Fees are fair and reasonable, in accordance with the standards established in *Diemer* and *Laurentian University*. The Professionals' Fees: (a) were incurred at comparable and competitive rates that reflect the appropriate responsibility, scope, and complexity of the case; (b) are reasonable given the scope of work involved; and (c) were necessary and consistent with the Receiver's duties under the Appointment Order.²²
35. The First Report describes what was accomplished by the Receiver and Miller Thomson during the work period covered by the fee affidavits (from July 2025 through to November 30, 2025 and December 31, 2025, respectively). In summary, amongst other things: the Receiver took possession of the Debtor's business; evaluated the commercial reasonableness of continuing Advantage as a going concern; took steps to wind-down operations, including the sale of work-in-progress and related raw materials (in accordance with the limits imposed by the Appointment Order); communicated with stakeholders; evaluated purchase money security interest claims by lessors; directed the Sale Process; negotiated the Agreements; and prepared the First Report.²³

²¹ First Report, *supra* note 2, paras. 60 and 62.

²² First Report, *supra* note 2, para. 63.

²³ First Report, *supra* note 2, para. 11.

(iii) The Confidential Appendices should be sealed

36. The Receiver respectfully requests that this court seal the Confidential Appendices until closing of the Transactions. The Confidential Appendices contain unredacted copies of the Agreements, and other unredacted documents which could be used to determine the value of the Transactions and the identify of unsuccessful bidders. The public versions of the Agreements have only been redacted to withhold the purchase price and the amount of the deposit, which are commercially sensitive. If the Transactions fail to close, the receiver believes that public disclosure of the purchase price and deposit and the identities of unsuccessful bidders would affect the integrity of any future sale process, including by setting a sale price ceiling.²⁴

37. Pursuant to the *Courts of Justice Act* (Ontario), this court has the discretion to order that any document filed in a civil proceeding be treated as “confidential”, sealed and not form part of the public record.²⁵

38. The test to determine if a sealing order should be granted is set out in *Sierra Club* as recast in *Sherman Estate*: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) a matter of proportionality, the benefits of the order outweigh its negative effects.²⁶

²⁴ First Report, *supra* note 2, para. 53.

²⁵ *Courts of Justice Act*, R.S.O. 1990, c C.43, s. 137(2). See also *Target Canada Corp, Re*, 2015 ONSC 1487 at paras 28-30.

²⁶ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53 [*Sierra Club*]; *Sherman Estate v Donovan*, 2021 SCC 25 at paras 38, 43 [*Sherman Estate*].

39. The Supreme Court in *Sierra Club* and *Sherman Estate* explicitly recognized that commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are an “important public interest” for purposes of this test.²⁷
40. The salutary effects of the sealing order, which provides the receiver with the ability to maximize value for the Debtor’s assets at a future date, should the Transactions not close, far outweigh the deleterious effects of the public not knowing the specific purchase price and the identify of unsuccessful bidders (until after the Transactions close).

(iv) The distribution in respect of property taxes should be approved

41. The Receiver seeks authorization to distribute funds from the Real Property Transaction proceeds to the Municipality of West Perth, on account of outstanding property taxes. The Receiver understands that current outstanding property taxes to be \$22,090.85. The proposed Ancillary Order authorizes the payment of this amount, plus any additional arrears payable as at the time of closing of the Real Property Transaction.²⁸
42. The Municipality of West Perth has a first-priority claim on the proceeds of the Real Property Transaction.²⁹
43. No party will be prejudiced by the proposed distribution. All other Transaction proceeds will be reserved and the distribution of same will be addressed by the

²⁷ *Sierra Club*, *supra* note 26, at para. 55; *Sherman Estate*, *supra* note 26, at para. 41-43.

²⁸ First Report, *supra* note 2, para. 67.

²⁹ First Report, *supra* note 2, para. 67.

Receiver on a subsequent motion. The first mortgagee in respect of the Real Property, BMO, does not object to the proposed distribution.³⁰

PART V - ORDERS REQUESTED

44. For the reasons set out herein, the Receiver requests this court grant the Approval and Vesting Orders approving the Transactions in substantially the same form as found at Tabs 3 and 5 of the motion record, and the Ancillary Order in substantially the same form as found at Tab 7 of the motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of February, 2026.



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³⁰ First Report, *supra* note 2, para. 66.

SCHEDULE "A"
LIST OF AUTHORITIES
(In order of appearance)

1. *Merchant Realty Partners Inc. v. 2407553 Ontario Inc.*, [2021 ONCA 375](#)
2. *Royal Bank of Canada v Soundair Corp.*, [1991] OJ No 1137, [1991 CanLII 2727](#) (CA).
3. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
4. *Hanfeng Evergreen Inc., (Re)*, [2017 ONSC 7161](#)
5. *Laurentian University of Sudbury*, [2022 ONSC 5850](#)
6. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)
7. *Laurentian University, Re*, Endorsement dated May 18, 2022, [2022 ONSC 2927](#) [Not available on CanLII. Available on the Monitor's website as Court Order #20]
8. *Target Canada Corp, Re*, [2015 ONSC 1487](#).
9. *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#).
10. *Sherman Estate v Donovan*, [2021 SCC 25](#).

I certify that I am satisfied as to the authenticity of every authority.

February 5, 2026

Date



Signature

SCHEDULE “B”
RELEVANT STATUES

Courts of Justice Act, R.S.O. 1990, c. C.43.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

BANK OF MONTREAL

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Applicant

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Court File No: CV-25-00001158-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at KITCHENER

**FACTUM OF MSI SPERGEL INC.
(MOTION RETURNABLE
FEBRUARY 12, 2026)**

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