



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00732200-00CL

DATE: JULY 21, 2025

NO. ON LIST: 4

TITLE OF PROCEEDING: BANK OF MONTREAL -v- MARIO'S CATERING SERVICE LTD.

BEFORE: MADAM JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Applicant:

Name of Person Appearing	Name of Party	Contact Info
Stewart Thom	Bank of Montreal	647-290-1812 sthom@torkinmanes.com
Annie Tayyab (observing)	Bank of Montreal	416-777-5362 atayyab@torkinmanes.com

For Respondent:

Name of Person Appearing	Name of Party	Contact Info
Blair G. McRadu	Mario's Catering Service Ltd., o/a Michelangelo Banquet Centre, 2150386 Ontario Inc., 9440763 Canada Inc. o/a the Grand Olympia Hospitality & Convention Centre and 13225585 Canada Inc., Kamran Elahi	416-777-4039 bmcradu@dickinsonwright.com
David P. Preger	(same as above)	416-646-4606 dpreger@dickinsonwright.com

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Other Parties in Attendance:

Name of Person Appearing	Name of Party	Contact Info
Melinda Vine	Counsel for Court Appointed Receiver – msi Spergel	519-854-6021 mvine@harrisonpensa.com
Trevor Pringle	Receiver - msi Spergel	905 527 2227 tpringle@spergel.ca
Paul Mand (observing)	Counsel for the Lender (purchase and refinancing transactions)	416-740-5653 pmand@mandlaw.com

ENDORSEMENT OF JUSTICE KIMMEL:

- [1] By Order of Justice Penny dated January 29th, 2025 (the "Appointment Order"), msi Spergel Inc. was appointed as Receiver of the Debtors, collectively: Mario's Catering Service Ltd. o/a Michelangelo Banquet Centre ("Michelangelo"), 2150386 Ontario Inc. ("Grand Olympia Realco"), 9440763 Canada Inc. o/a The Grand Olympia Hospitality & Convention Centre ("Grand Olympia"), 13225585 Canada Inc. ("132").
- [2] The Appointment Order was deferred to May 15, 2025 to allow the Debtors to pursue an opportunity to sell one of their properties and pay out the amounts owing to the applicant and their senior secured creditor, the Bank of Montreal ("BMO").
- [3] That intended sale was not completed and the Appointment Order became effective. Since then, the Debtors have successfully negotiated the sale of one of their properties and a refinancing of the other (the "Transactions") with sufficient anticipated proceeds to satisfy BMO, as well as tax liens filed by the Canada Revenue Agency (the "CRA") and certain other priority payables (these being all of the Debtors' secured and priority creditors).
- [4] The Receiver has received the opinion from its counsel that, subject to customary assumptions and qualifications for opinions of this nature, the security interests in favour of BMO are valid and enforceable in the Province of Ontario. The outstanding balance under the BMO credit facilities as of July 14, 2025 was \$15,328,985.95, inclusive of BMO's legal fees (the "BMO Indebtedness"). Per diem interest of \$2,858.43 is accruing thereon. The amounts owing to the CRA and other priority payables have been established and are detailed in the Receiver's First Report dated July 17, 2025 (the "First Report"). These amounts are not in dispute.
- [5] The Debtors now move for the discharge of the Receiver and certain ancillary relief. Their motion is supported by the Receiver and not opposed by any creditor.
- [6] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Debtors' factum dated July 17, 2025.

The Discharge and Sealing Order

- [7] The sale price is \$11 million under the APS for the property at 660 Barton Street, Stoney Creek, Ontario (the “Barton Property”), out of which Grand Olympia formerly operated as a banquet hall/catering service. Schedule B to the APS contains an acknowledgement that the Barton Property is subject to a court-appointed Receiver and specifically provides that the Buyer and Seller agree that the APS shall not be effective or enforceable until and unless the Receiver is discharged by the Court. The APS is conditional until 5:00 p.m. on July 21, 2025 upon the Receiver being discharged by the Court. No commission is payable out of the sale price. On the closing of the sale of the Barton Property, Grand Olympia will take back a lease and resume operating the banquet hall/catering business from those same premises.
- [8] The same lender, Ontario Wealth Management Corporation ("Owemanco"), is funding both the APS in respect of the Barton Property and the refinancing of the 1555 Upper Ottawa Street, Hamilton, Ontario from which Michelangelo operated as a banquet hall/catering service (the "Upper Ottawa Property"). It will receive a first mortgage against that property for its \$6.5 million advance and 1000193451 Ontario Inc. ("100"), a company related to the Purchaser, has committed a loan of an additional \$1 million, to be secured by a second mortgage against the Upper Ottawa Property (the "Second Mortgage"). The net advance of funds under the Second Mortgage will be \$990,000.20. Owemanco and 100 are prepared to complete the Upper Ottawa Refinancing immediately upon the discharge of the Receiver.
- [9] While the Transactions are subject to the discharge of the Receiver, counsel for Owemanco assured the court that his firm has already received the funds required for both Transactions and is ready to transfer them to counsel for the Receiver once the requested discharge order has been signed, and prior to the Discharge Certificate being filed.
- [10] The Receiver assures the court that while the sequencing of the steps is different than would typically occur (the discharge order being granted before the Transactions have closed), the contemplated steps themselves are not out of the ordinary and the Receiver supports the granting of the relief sought in the particular circumstances of this case. The Receiver will be able to determine how much to pay each secured and priority creditor based on the known indebtedness and per diem amounts indicated, where applicable.
- [11] The estimated quantum of the BMO Indebtedness, the CRA Tax Liens and the Priority Payables (together, the "Secured Amounts") as of July 21, 2025 is as follows:
- a. Secured Amounts Priority Payables \$1,078,695.03
 - b. Tax Liens \$1,381,336.48

c. BMO Indebtedness (inclusive of \$15,348,951.33 per diem interest to July 21)¹

Total \$17,808,982.84 16

- [12] The estimated per diem interest accruing is \$3,123.27.13 17. There are additional PPSA registrations against two of the Debtors, Grand Olympia and Michelangelo. The Receiver does not consider these creditors will be affected by the discharge of the Receiver or prejudiced by the Transactions, nor will the unsecured creditors. Nothing is being vested out by the discharge order that is sought.
- [13] The proposed order and sequencing is designed to allow the proceeds from the Transactions to be paid to counsel for the Receiver, and the Receiver to distribute them to the secured and priority creditors upon or just prior to its discharge that will be effective upon the filing of its discharge certificate, with the transactions to close immediately after the Receiver is discharged, all to take place immediate succession upon the granting of the discharge order sought by this motion.
- [14] The specific sequencing of the steps is detailed in paragraph 26 of the Debtors' factum, but the discharge order has been amended (at paragraph 8) to make it clear that the specific steps set out in the paragraph 29 of the Receiver's Report will have been taken and the Secured Amounts will have been distributed from the proceeds of the Transactions before the Discharge Certificate is filed, and that the release of the Receiver will only be effective upon the filing of the Discharge Certificate (at paragraph 9).
- [15] Paragraph 10 of the order provides the necessary direction to the Land Registrar of the Land Titles Office to remove the Appointment Order that was registered on title to the Debtors' Barton Property that is being sold.
- [16] The release language is consistent with the model order. The release of the Receiver provided for upon its discharge appropriately excludes gross negligence and willful misconduct, as is the practice of this court for these release orders. In the absence of evidence of such, it is appropriate to include the requested release in the discharge order.
- [17] While there are circumstances in which it is appropriate to have two stage-sequential releases (for example in the September 14, 2020 decision of Chief Justice Morawetz in *Urbancorp (Leslieville) Developments Inc. et al*, Court File No. CV-16-11409-00CL at paras 16-21) the Receiver notes that that typically arises in circumstances where the court is being asked to approve a transaction that still has to close and the Receiver will only then come into possession of the proceeds to be distributed at a later point in time; whereas here, the court is not being asked to approve the Transactions, the funds are

¹ Note there is a reference in the factum of the moving party to a dispute about some amount owing to BMO, referred to as the IRD Penalty amount. No reference was made to this during the court hearing and it is not explicitly identified as part of the amount being paid to BMO under the requested order. Since BMO is not opposing this order the court has proceeded on the basis that the dispute has either been resolved or the interested parties are content to deal with it outside of the receivership.

already in the hands of counsel for Owenmanco and will be immediately transferred to counsel for the Receiver upon receipt of the signed order, and the Receiver will not file its discharge certificate unless and until it has completed the steps indicated in paragraph 29 of its First Report and paid out all of the Secured Amounts owing to the secured and priority creditors.

- [18] Since there will be no discharge until the proceeds have been distributed and the Transactions will close at the same time or immediately afterwards, it is not expected that there will be any gap in time between the effective date of the release and the Receiver's discharge, after which the Receiver will have only small administrative loose ends to tie up which the model order provides for after discharge.
- [19] As Pattillo J. observed: "in the absence of any evidence of improper or negligence conduct, the release should issue": See *Pinnacle Capital Resources Ltd. v. Kraus Inc.*, 2012 CarswellOnt. 14138 (ONSC), at para 47.
- [20] The Receiver has provided the court with Confidential Appendix 1 to its First Report dated July 18, 2025 (the "Confidential Appendix") that contains a liquidation analysis as of July 17, 2025. Based on this, the Receiver is of the view that the proposed Transactions may provide a higher recovery than the receivership sales process postulated in the listing proposals received.
- [21] The Receiver is seeking a sealing order in respect of the Confidential Appendix to this First Report as it contains commercially sensitive information about the potential recoveries from the sale of the Debtors' real properties, the release of which prior to the completion of the proposed Transactions would be prejudicial to the stakeholders of the debtors if the Transactions do not close and the Receiver has to later market and sell those properties.
- [22] The requested partial sealing order is limited in its scope (only the specifically identified Confidential Appendix) and in time (until the Receiver is discharged upon making the contemplated distributions of the Secured Amounts).
- [23] The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality. It is necessary to avoid any interference with subsequent attempts to market and sell the Debtors' property, and any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information prior to the completion of the Transactions. These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings.
- [24] I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC

requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38. Granting this order is consistent with the court's practice of granting limited partial sealing orders in conjunction with sale transactions in restructuring proceedings.

- [25] **The Receiver is directed to ensure that the sealed Confidential Appendix is provided to the court clerk at the filing office in an envelope with a copy of this endorsement and the signed order with the relevant provisions highlighted so that it can be physically sealed. The Receiver is further directed to ensure that the Confidential Appendix is "unsealed" at an appropriate time upon the earlier of the Receiver having filed its Discharge Certificate, or further order of this court.**

Approval of Activities and Fees

- [26] The approval of the First Report and the activities of the Receiver described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders limiting reliance upon the court approval to the Receiver and only in its personal capacity and in respect of its personal liability.
- [27] It has become the practice of the court to periodically approve the activities of its court appointed officers to ensure that their activities are being conducted in a prudent and diligent manner and in accordance with their mandate. It is within the court's inherent jurisdiction to do so: see *Target Canada Co. (Re)*, 2015 ONSC 7574, at para. 23. The Receiver's activities are approved, having regard to these considerations and given that the Receiver also does not appear to have done more than was necessary in the circumstances and given the short duration of this receivership.
- [28] No interested party disputes that the Receiver has acted in good faith and for the benefit of stakeholders generally.
- [29] The Receiver has incurred fees of \$65,878.07 inclusive of disbursements and HST to and including June 30, 2025 (the "Receiver's Fees"). A copy of the detailed time dockets and hourly rates of the Receiver are appended to the supporting Affidavit of Trevor Pringle sworn July 17, 2025. The Affidavit of Kinsey Greenfield, sworn July 17, 2025 incorporates by reference a copy of the time dockets of the Receiver's Counsel for the period to and including July 15, 2025, in the amount of \$23,830.85 inclusive of disbursements and HST.
- [30] The professional fees claimed for the Receiver and its counsel are supported by affidavits and reflect the work that has been done since the Appointment Order. The fees are commensurate with the tasks performed and the Receiver considers the fees and hourly rates to be reasonable. I find them to be fair, reasonable and justified in the circumstances. See *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras 33 and 44-45.

- [31] On completion of the remaining activities as detailed in the First Report and filing the Discharge Certificate, the Receiver will have substantially completed its mandate as contemplated by the Appointment Order, and under the *Bankruptcy and Insolvency Act*. Conditional discharges of the nature proposed avoid the time and expense of another motion, providing for an efficient, cost- effective conclusion to the receivership proceedings. The conditional discharge conserves the limited recoveries.
- [32] The Receiver anticipates that the further fees and disbursements of the Receiver and the Receiver's counsel in connection with this motion and completing the Remaining Activities will not exceed \$70,000, not including disbursements and HST (the "Fee Accrual"). The Receiver believes that the this Fee Accrual will be sufficient and necessary to cover its fees and the fees of its counsel to the completion of these proceedings, and it is approved on the basis of that recommendation. Any excess will be returned to the Debtors.

Discharge Order

- [33] The Discharge Order may issue in the form signed by me today.

A handwritten signature in dark ink, appearing to read "Kimmel J.", with a stylized, cursive script.

KIMMEL J.