

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**BANK OF MONTREAL**

Applicant

- and -

**MARIO'S CATERING SERVICE LTD. O/A MICHELANGELO BANQUET CENTRE, 2150386 ONTARIO INC., 9440763 CANADA INC. O/A THE GRAND OLYMPIA HOSPITALITY & CONVENTION CENTRE, 13225585 CANADA INC., AFTAB ELAHI, EMILIA MANSOOR AKA EMILIA ELAHI, KAMRAN ELAHI AKA MANSOOR KAMRAN ELAHI AKA MANSOOR ELAHI AND RAFFET ELAHI**

Respondents

**APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S. C. 1985 c-B-3, s.101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure***

**FACTUM OF THE DEBTORS**

July 17, 2025

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TO: **SERVICE LIST**

## PART I - INTRODUCTION

1. The Respondents 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**" and together with Michelangelo, Grand Olympia Realco and Grand Olympia, collectively, the "**Debtors**") move for an order: (a) abridging the time for service and filing of the Debtors' Notice of Motion and Motion Record so that the Motion is properly returnable on the date it is scheduled for hearing and dispensing with further service thereof; (b) approving the activities of msi Spergel Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the "**Receiver**") of the assets, undertakings and properties of the Debtors, as set out in the First Report of the Receiver, to be filed (the "**First Report**"); (c) approving the fees and disbursements of the Receiver and its counsel as set out in the fee affidavits appended to the First Report (the "**Fee Affidavit**"); (d) discharging msi Spergel Inc. as Receiver; (e) releasing msi Spergel Inc. from any and all liability; and (f) discharging instrument WE1796046 from the lands and premises municipally known as (i) 660 Barton Street, Stoney Creek, Ontario (the "**Barton Property**"), and (ii) 1555 Upper Ottawa Street, Hamilton, Ontario (the "**Upper Ottawa Property**"), both as legally described in Schedule "A" hereto.

2. The Debtors have entered into agreements for two transactions that will, together, generate sufficient funds to pay out the amounts owed to the appointing creditor, Bank of Montreal ("**BMO**"), as well as tax liens filed by the Canada Revenue Agency (the "**CRA**") and certain other priority payables.

## PART II - SUMMARY OF FACTS

### A. Background

3. The Respondents are borrowers/guarantors under credit facilities and conventional mortgages advanced by BMO.<sup>1</sup>

4. Prior to the Receiver's appointment:

- (a) Michelangelo operated as a banquet hall/catering service from premises it owns at 1555 Upper Ottawa Street, Hamilton, Ontario (the "**Upper Ottawa Property**"); and
- (b) Grand Olympia operated as a banquet hall/catering service from premises located at 660 Barton Street, Stoney Creek, Ontario (the "**Barton Property**" and together with the Upper Ottawa Property, the "**Properties**"). Grand Olympia Realco owns the Barton Property.<sup>2</sup>

### B. The Receivership

5. By Order of Justice Penny dated January 29th, 2025 (the "**Appointment Order**"), msi Spergel Inc. was appointed as Receiver of the Debtors.<sup>3</sup> The Appointment Order was deferred to May 15, 2025 to allow the Debtors to pursue a sale of the Barton Property and pay out the amounts owing to BMO.<sup>4</sup>

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<sup>1</sup> Affidavit of Kamran Elahi, sworn July 16, 2025 ("**Elahi Affidavit**") at para. 6, Motion Record of the Debtors ("**MR**"), Tab 2, p. 19.

<sup>2</sup> Elahi Affidavit at para. 6, MR, Tab 2, p. 19.

<sup>3</sup> Appointment Order, Exhibit C, Elahi Affidavit, MR, Tab 2, p. 43.

<sup>4</sup> Endorsement of Justice Penny, Exhibit D, Elahi Affidavit, MR, Tab 2, p. 63.

6. Although Grand Olympia and Grand Olympia Realco had entered into an agreement of purchase and sale, the buyer did not waive conditions and the sale did not close.

7. Following the Receiver's appointment, Michelangelo and Grand Olympia were closed, resulting in multiple cancellations of events. Since that time, the Respondents have been working continuously to refinance the BMO Indebtedness (as defined below) with a view to obtaining the Receiver's discharge.

### **C. Indebtedness**

8. The outstanding balance under the BMO credit facilities as of July 14, 2025 is \$15,328,985.95, inclusive of BMO's legal fees (the "**BMO Indebtedness**"). Per diem interest of \$2,858.43 is accruing thereon.<sup>5</sup>

9. The quantum of the BMO Indebtedness is inclusive of an interest rate differential penalty (the "**IRD Penalty**") charged by BMO in the amount of \$135,241.03. The Respondents dispute the inclusion of the IRD Penalty in the BMO Indebtedness.<sup>6</sup>

10. Due to outstanding unremitted source deductions on the part of Michelangelo and Grand Olympia Realco, the CRA filed tax liens (the "**Tax Liens**") against the Upper Ottawa Property and the Barton Property.<sup>7</sup>

11. The total amount owing under the Tax Liens as of July 21, 2025 will be \$1,381,336.48, with per diem interest of \$264.85.<sup>8</sup>

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<sup>5</sup> Elahi Affidavit at para. 10, MR, Tab 2, p. 20.

<sup>6</sup> BMO Payout Statement, Exhibit F, Elahi Affidavit, MR, Tab 2, p. 69.

<sup>7</sup> CRA Tax Liens, Exhibit H, Elahi Affidavit, MR, Tab 2, p. 72.

12. The Receiver and its counsel have not provided their final fees to the close of this matter (the “**Professional Fees**”), but such fees are estimated at \$120,000.<sup>9</sup>

13. In addition to the Professional Fees, there are property tax arrears in respect of the Upper Ottawa Property and the Barton Property (together, the “**Property Taxes**” and collectively with the Professional Fees, the “**Priority Payables**”).<sup>10</sup>

14. The total estimated quantum of the Priority Payables as of July 21, 2025 is \$1,078,659.03.<sup>11</sup>

15. 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:<sup>12</sup>

| <b>Secured Amounts</b>  |                        |
|---|------------------------|
| Priority Payables   | \$1,078,695.03         |
| Tax Liens   | \$1,381,336.48         |
| BMO Indebtedness (inclusive of<br>per diem interest to July 21) | \$15,348,951.33        |
| <b>Total</b>  | <b>\$17,808,982.84</b> |

16. The estimated per diem interest accruing is \$3,123.27.<sup>13</sup>

17. There are additional PPSA registrations against Grand Olympia and Michelangelo. These creditors will not be affected by the discharge of the Receiver or prejudiced by the Transactions.<sup>14</sup>

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<sup>8</sup> July 14 CRA Letters, Exhibit I, Elahi Affidavit, MR, Tab 2, p. 85.

<sup>9</sup> Exhibit J, Elahi Affidavit, MR, Tab 2, p. 104; Elahi Affidavit at para. 19, p. 23.

<sup>10</sup> Exhibit K, Elahi Affidavit, MR, Tab 2, p. 108.

<sup>11</sup> Elahi Affidavit at para. 22, MR, Tab 2, p. 23.

<sup>12</sup> Elahi Affidavit at para. 24, MR, Tab 2, p. 24.

<sup>13</sup> Elahi Affidavit at para. 25, MR, Tab 2, p. 24.

**A. Payout and Discharge**

18. Grand Olympia Realco, as vendor, and an arm's length third party purchaser (the "**Purchaser**"), have entered into an agreement of purchase and sale dated July 14, 2025 (the "**APS**") for the sale of the Barton Property (the "**Barton Sale**").<sup>15</sup>

19. The sale price under the APS is \$11 million. Schedule B to the APS contains an acknowledgement that the Barton Property is subject to a court-appointed receivership with the Receiver. Furthermore, Schedule B 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. Moreover, Schedule B provides that 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.<sup>16</sup>

20. On closing of the Barton Sale, Grand Olympia will take back a lease and resume operating the banquet hall/catering business from the Barton Property.<sup>17</sup>

21. The Debtors has also arranged to refinance the BMO mortgage on the Upper Ottawa Property (the "**Upper Ottawa Refinancing**" and, together with the Barton Sale, the "**Transactions**").<sup>18</sup>

22. Michelangelo has obtained a mortgage commitment from Ontario Wealth Management Corporation ("**Owemanco**"), a commercial mortgage lender in respect of the Upper Ottawa

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<sup>14</sup> Exhibit L, Elahi Affidavit, MR, Tab 2, p. 111; Elahi Affidavit at paras. 28 and 29, MR, Tab 2, p. 25.

<sup>15</sup> Exhibit M, Elahi Affidavit, MR, Tab 2, p. 136.

<sup>16</sup> Elahi Affidavit at para. 33, MR, Tab 2, p. 26.

<sup>17</sup> Elahi Affidavit at para. 34, MR, Tab 2, p. 26.

<sup>18</sup> Elahi Affidavit at para. 38, MR, Tab 2, p. 27.

Property. Owemanco has committed a loan of \$6.5 million, to be secured by a first mortgage against the Upper Ottawa Property (the “**First Mortgage**”). The net advance, after fees, under the First Mortgage will be \$5,888,184.39.<sup>19</sup>

23. 1000193451 Ontario Inc. (“**100**”), a company related to the Purchaser, has committed a loan of \$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.<sup>20</sup>

24. Owemanco and 100 are prepared to complete the Upper Ottawa Refinancing immediately upon the discharge of the Receiver.<sup>21</sup>

25. Following the Upper Ottawa Refinancing, 132 will operate the banquet hall/catering business from the Upper Ottawa Property.<sup>22</sup>

26. The mechanism contemplated to accomplish the payout of the Secured Amounts is as follows:<sup>23</sup>

- (a) the Court granting an Order discharging the Receiver, effective upon the Receiver filing a certificate confirming that its counsel has received sufficient funds to pay out the Secured Amounts in full (the “**Certificate**”);
- (b) the CRA confirming that it will discharge the Tax Liens upon receipt of written confirmation that the Receiver’s counsel is holding sufficient funds in escrow to pay out the Tax Liens in full and the Receiver’s counsel’s undertaking to pay same upon filing the Certificate;

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<sup>19</sup> Exhibit N, Elahi Affidavit, MR, Tab 2, p. 150; Elahi Affidavit at paras. 41 and 42, MR, Tab 2, p. 27.

<sup>20</sup> Exhibit O, Elahi Affidavit, MR, Tab 2, p. 162; Elahi Affidavit at para. 44, MR, Tab 2, p. 28.

<sup>21</sup> Elahi Affidavit at para. 45, MR, Tab 2, p. 28.

<sup>22</sup> Elahi Affidavit at para. 46, MR, Tab 2, p. 28.

<sup>23</sup> Elahi Affidavit at para. 48, MR, Tab 2, p. 28.



- (c) prior to the completion of the Transactions, the Purchaser, Owemanco and 100 being directed to pay sufficient proceeds to the Receiver's counsel in trust to pay out the Secured Amounts in full; and
- (d) the Transactions being completed contemporaneously with the filing of the Certificate.

27. The estimated total net proceeds from the Transactions will be \$17,878,184.39, which exceeds the estimated quantum of the Secured Amounts as of July 21, 2025 by almost \$70,000.<sup>24</sup>

### **PART III - ISSUES**

28. The following issues are raised on this motion:

- (a) whether the time for service of the Debtor's Notice of Motion and Motion Record should be abridged and further service dispensed with;
- (b) whether the Receiver's discharge should be granted;
- (c) whether msi Spergel Inc. should be released from any and all liability;
- (d) whether the First Report, and the activities and proposed activities of the Receiver described therein, should be approved; and
- (e) whether the fees and disbursement of the Receiver and its counsel as set out in the Fee Affidavits should be approved.

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<sup>24</sup> Elahi Affidavit at para. 49, MR, Tab 2, p. 29.

## **PART IV - LAW & AUTHORITIES**

### **A. Time for Service Should be Abridged**

29. The Court may by order, extend or abridge any time prescribed by the Rules on such terms as are just. Further, the Court may dispense with compliance with any Rule at any time where and as necessary in the interest of justice. Finally, the Court may dispense with service where it is impractical to effect prompt service and/or it may validate service where it is satisfied that the document came to the notice of the person to be served.<sup>25</sup>

### **B. The Receiver should be Discharged and Released from Liability**

30. Once the Receiver's counsel distributes the funds from the Transactions as contemplated above, the Receiver will have completed its mandate. The Debtors therefore respectfully submit that this receivership proceeding should be terminated and the Receiver should be discharged and released following the filing of the Certificate with the Court, certifying that its counsel holds fund sufficient to pay out the Secured Amounts.

31. The unsecured creditors of Grand Olympia and Michelangelo will be unaffected. Moreover, although Grand Olympia Realco is selling the Barton Property, it has no unsecured creditors who could be prejudiced by the sale.

32. On the other hand, the Receiver has not taken any steps to market and sell the properties. If it were to do so, the outcome would be uncertain, particularly given the current depressed real estate climate in the Hamilton area and the incremental professional costs and

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<sup>25</sup> Rules [2.03](#), [3.02](#), [16.04](#) and [16.08](#), *Rules of Civil Procedure*, [R.R.O. 1990, Reg. 194](#).

interest accrual that would be associated with such a marketing and sale process by the Receiver.

33. The order contains standard provisions providing for the Receiver's release from liability upon its discharge (subject to the usual expectations for gross negligence and wilful misconduct) and permitting the Receiver to continue to perform any incidental and necessary duties.

**C. The First Report Should be Approved**

34. The First Report should be approved. The activities and recommendations set out therein are appropriately justified, and there are good policy and practical reasons for the Court to approve the activities of a court-appointed receiver.<sup>26</sup>

**D. The Fees and Disbursements of the Receiver and its Counsel**

35. The professional fees of the Receiver and its counsel, as detailed in the First Report, should be approved.

36. In determining whether to approve the fees of a receiver and its counsel, the Court should consider whether the remunerations and disbursements incurred in carrying out the receivership were fair and reasonable and take into consideration the following factors, which constitute a useful guideline, but are not exhaustive:

- (a) the nature, extent and value of the assets;
- (b) the complications and difficulties encountered;

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<sup>26</sup> *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#) at [paras 65-67](#), citing Regional Senior Justice G.B. Morawetz (as he then was) in *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [paras 12](#) and [23](#).


- (c) the degree of assistance provided by the debtor;
- (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.<sup>27</sup>

37. The fees and disbursements of the Receiver and its counsel were incurred at their respective standard rates and charges, accurately reflect the work done by the Receiver and by its counsel in connection with the receivership, and are fair, reasonable and justified in the circumstances.

#### **PART V - ORDER REQUESTED**

38. For the reasons set out above, the Debtors respectfully request that this Court grant an Order substantially in the form attached at as Schedule "B" to their Notice of Motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 17<sup>th</sup> day of July, 2025.

  
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**David P. Preger and Blair McRadu**

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<sup>27</sup> *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at paras [33](#) and [45](#).

July 17, 2025

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Lawyers for the Debtors

**SCHEDULE "A"**

**LIST OF AUTHORITIES**I, Blair McRadu, counsel for the Applicants, am satisfied as to the authenticity of every authority listed in the Factum of the Applicants as required by Rule 4.06.1.



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**Blair McRadu**

1. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#)
2. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
3. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)

**SCHEDULE "B"**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

***Rules of Civil Procedure, R.R.O. 1990, Reg. 194.***

**COURT MAY DISPENSE WITH COMPLIANCE**

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

**EXTENSIONS OR ABRIDGMENT**

***General Powers of Court***

3.02(1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

***Times in Appeals***

(3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court

***Consent in Writing***

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by filing a consent.

**SUBSTITUTED SERVICE OR DISPENSING WITH SERVICE**

***Where Order May be Made***

16.04 (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may take an order for substituted service or, where necessary in the interest of justice, may dispense with service.

***Effective Date of Service***

(2) In an order for substituted service, the court shall specify when service in accordance with the order is effective.

(3) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules.

**VALIDATING SERVICE**

16.08 Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that, (a) The document came to the notice of the person to be served; or (b) The document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.



**BANK OF MONTREAL**  
Applicant

-and- **MARIO'S CATERING SERVICE LTD. et al**  
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