

Court File No. CV-24-00715191-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

HOME TRUST COMPANY

Applicant

and

VANDYK - BACKYARD HUMBERSIDE LIMITED

Respondent

**MOTION RECORD
(RETURNABLE NOVEMBER 26, 2024)**

SimpsonWigle LAW LLP
1006 Skyview Drive, Suite 103
Burlington, ON L7P 0V1

Rosemary A. Fisher (LSO No. 32238T)
Email: fisherr@simpsonwigle.com
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Lawyers for the Receiver, msi Spergel Inc.

TO: THE SERVICE LIST

#4046059.1

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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TAB A

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

HOME TRUST COMPANY

Applicant

- and -

VANDYK - BACKYARD HUMBERSIDE LIMITED

Respondent

**NOTICE OF MOTION
(Returnable: November 26, 2024)**

msi Spergel Inc. ("**Spergel**" or the "**Receiver**") in its capacity as receiver and manager, without security, of the assets, undertakings and properties of Vandyk-Backyard Humberside Limited ("**VBHL**" or the "**Debtor**"), will make a Motion before a Judge presiding over the Commercial List on Tuesday, the 26th day of November, 2024, at 11:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard by video conference,

at the following location:

330 University Avenue, Toronto, Ontario.

THE MOTION IS FOR:

1. An Order substantially in the form attached at [Tab C](#) of the within Motion Record, *inter alia*:

- (i) if necessary, abridging and validating the time for and manner of service of the Notice of Motion and the Motion Record in the manner effected by the Receiver and an Order dispensing with service thereof on any party other than the parties served such that this motion is properly returnable on November 26, 2024;
- (ii) approving the Second Report of the Receiver dated November 7, 2024 (the “**Second Report**”) and the conduct, activities and actions to date;
- (iii) approving the Receiver’s Final Statement of Receipts and Disbursements dated November 7, 2024;
- (iv) approving the payment into Court of the Disputed Funds, as same are defined in the Second Report;
- (v) approving the distribution of the net proceeds of sale of the property of VBHL and authorizing and directing the Receiver to proceed to make the distributions and set aside the reserves recommended by the Receiver in the Second Report;
- (vi) approving the professional fees of the Receiver for the period commencing July 20, 2024 to and including October 31, 2024, in the amount of \$57,216.42,

inclusive of HST and disbursements, as well as authorizing the Receiver to make payment of such amounts to Spergel from the sale proceeds;

- (vii) approving the legal fees of SimpsonWigle LAW LLP, lawyers for the Receiver, for the period of July 25, 2024 to and including November 6, 2024, in the amount of \$38,186.60, inclusive of HST and disbursements, as well as authorizing the Receiver to make payment of such amounts to SimpsonWigle LAW LLP from the sale proceeds;
- (viii) effective upon filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtor have been completed, discharging Spergel as the Receiver and granting certain ancillary relief in relation thereto;
- (ix) releasing and discharging Spergel from any and all liability that Spergel now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Spergel, prior to the date of this Order, while acting in its capacity as Receiver herein save and except for any gross negligence or wilful misconduct on the Receiver's part; and,
- (x) such further Order as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:**Background**

1. Pursuant to the Order of the Honourable Justice Osborne dated March 5, 2024 (the “**Appointment Order**”), Spergel was appointed as Receiver of the assets, undertakings and properties of the Debtor.

Approval of the Receiver’s Accounts and Interim Statement of Receipts and Disbursements

2. The Appointment Order requires the Receiver and its legal counsel to pass its accounts from time to time.

3. The Receiver has properly incurred fees and disbursements during the period July 20, 2024 to and including October 31, 2024, in the amount of \$57,216.42, inclusive of HST.

4. The legal expense incurred by the Receiver for services provided by its legal counsel, SimpsonWigle LAW LLP (“**SW**”) for the period July 25, 2024 to and including November 6, 2024, in the amount of \$38,186.60, inclusive of HST and disbursements, has been properly incurred as detailed in the Second Report.

5. The Receiver is of the view that all of the work set out in SW’s accounts was carried out by its lawyers and clerks and was necessary and reasonable.

6. The Receiver seeks the approval of the Receiver’s fees and SW’s fees and that the Receiver be authorized to pay the same.

7. The Receiver seeks approval of the Receiver's Final Statement of Receipts and Disbursements as detailed in the Second Report.

Receiver's Proposed Distribution

8. The Receiver is proposing to make a distribution (after payment of the fees and disbursements of both the Receiver and the Receiver's Counsel, as outlined in the Second Report) as follows:

- i. If necessary, payment into Court of the sum of \$41,833.62 in respect of the Disputed Funds, as same are defined in the Second Report; and,
- ii. The remainder of the proceeds, if any, to the third mortgage holder, 2233651 Ontario Limited.

Discharge of the Receiver

9. Subsequent to the date of this Second Report, and prior to the Receiver's discharge, the Receiver proposes to attend to the following:

- (a) a payment of the distributions as identified above;
- (b) other residual and/or administrative matters in connection with Spergel's appointment as the Receiver; and
- (c) filing of the Receiver's certificate of discharge.

10. The Receiver seeks an order discharging and releasing the Receiver effective upon the Receiver filing a Certificate with the Court confirming that the receivership estate of the Debtor had been fully administered.

11. Such grounds as described in the Second Report of the Receiver dated November 7, 2024.
12. Rules 2.03, 3.02 and 37 of the [Rules of Civil Procedure](#).
13. Section 101 of the [Courts of Justice Act, R.S.O. 1990 c. C-43](#), as amended.
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. [The Second Report of the Receiver dated November 7, 2024 and the appendices annexed thereto](#); and,
2. Such further and other evidence as counsel may adduce and this Honourable Court permit.

November 8, 2024

SimpsonWigle LAW LLP
1006 Skyview Drive, Suite 103
Burlington, ON L7P 0V1

Rosemary A. Fisher (LSO #32238T)
E-mail: fisherr@simpsonwigle.com
Tel: (905) 639-1052
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Lawyers for msi Spergel Inc., in its capacity as Receiver of the assets, undertakings and properties of Vandyk-Backyard Humberside Limited

TO: THE SERVICE LIST APPENDED AS SCHEDULE "A"

**SCHEDULE "A"
SERVICE LIST**

<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9</p> <p>Harvey Chaiton Tel: (416) 218-1129 Email: harvey@chaitons.com</p> <p>Laura Culleton Tel: (416) 218-1128 Email: laurac@chaitons.com</p> <p>Lawyers for Home Trust Company</p>	<p>VANDYK – BACKYARD HUMBERSIDE 1944 Fowler Drive, Mississauga, ON L5K 0A1</p> <p>Email: jvandyk@vandyk.com</p>
<p>LOOPSTRA NIXON LLP Richmond-Adelaide Centre 130 Adelaide Street West, Suite 2800 Toronto, ON M5H 3P5</p> <p>R. Graham Phoenix Tel: (416) 748-4776 Email: gphoenix@LN.Law</p> <p>Lawyers for Kay Family Investments Inc.</p>	<p>Arif Raza, M.A., LL.B. Barrister & Solicitor West/Mississauga Off: 4299 Village Centre Court, Suite 300 Mississauga, ON L4Z 1S2 t: 647-783-3700 / f: 1844-253-6411 Toronto Off: 207-2131 Lawrence Ave. E Toronto, ON M1R 5G4 t: 416-752-9810/ f: 1844-253-6411 Email: arifrazalaw@gmail.com</p> <p>Lawyer for 2233651 ONTARIO LIMITED</p>
<p>Arif Raza, M.A., LL.B. Barrister & Solicitor West/Mississauga Off: 4299 Village Centre Court, Suite 300 Mississauga, ON L4Z 1S2 t: 647-783-3700 / f: 1844-253-6411 Toronto Off: 207-2131 Lawrence Ave. E Toronto, ON M1R 5G4 t: 416-752-9810/ f: 1844-253-6411 Email: arifrazalaw@gmail.com</p> <p>Lawyer for HALEEMAH MUHAMMAD</p>	<p>LIVE PATROL INC. 2645 Skymark Avenue, Suite 205 Mississauga, ON L4W 4H2</p>

<p>AVIVA INSURANCE COMPANY OF CANADA 600 Cochrane Drive, Suite 205 Markham, ON L3R 5K3</p> <p>Nabila Majidzadeh Senior Counsel Email: nabila.majidzadeh1@aviva.com</p>	<p>CWB NATIONAL LEASING INC. 1525 Buffalo Place Winnipeg, MB R3T 1L9</p> <p>Jude Vermette Senior Legal Counsel</p> <p>Tel: 1 (204) 954-9027 Email: jude.vermette@cwbank.com</p>
<p>KUBOTA CANADA LTD. 5900 14th Ave. Markham, ON L3S 4K4</p> <p>Email: kcl_g.finance@kubota.com</p>	<p>MCAP FINANCIAL CORPORATION 200 King St. W., Suite 400 Toronto, ON M5H 3T4</p> <p>Mark Adams Tel: (416) 847-3505 Email: mark.adams@mcap.com Email: law@mcap.com</p>
<p>PEOPLES TRUST COMPANY 95 Wellington St. W., Suite 1310 Toronto, ON M5J 2N7</p>	<p>DEPARTMENT OF JUSTICE Tax Law Services Division 120 Adelaide Street West, Suite 400 Toronto, Ontario M5H 1T1</p> <p>Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</p> <p>Lawyers for Canada Revenue Agency</p>
<p>HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE Insolvency Unit 33 King Street West, 6th floor Oshawa, Ontario L1H 8H5</p> <p>Email: insolvency.unit@ontario.ca</p>	

Email Service List:

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nabila.majidzadeh1@aviva.com; jude.vermette@cwbank.com;
kcl_g.finance@kubota.com; mark.adams@mcap.com; law@mcap.com; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; insolvency.unit@ontario.ca;
gphoenix@LN.Law; arifrazalaw@gmail.com

HOME TRUST COMPANY
Applicant

-and- VANDYK - BACKYARD HUMBERSIDE LIMITED
Respondent

018

Court File No. CV-24-00715191-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

SimpsonWigle LAW LLP

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Lawyers for the Receiver, msi Spergel Inc.

#3941146.1

TAB B

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

HOME TRUST COMPANY

Applicant

- and -

VANDYK – BACKYARD HUMBERSIDE LIMITED

Respondent

**SECOND REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE RECEIVER OF
VANDYK – BACKYARD HUMBERSIDE LIMITED**

NOVEMBER 7, 2024

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APPENDICES

1. Order Appointing Receiver by The Honourable Justice Osborne dated March 5, 2024
2. Endorsement of the Honourable Justice Osborne, dated March 5, 2024
3. The Receiver's First Report to Court, dated July 25, 2024
4. Approval and Vesting Order by the Honourable Justice Cavanagh, dated August 14, 2024
5. Endorsement by the Honourable Justice Cavanagh, dated August 14, 2024
6. Fee Affidavit of Trevor Pringle, Sworn November 7, 2024
7. Fee Affidavit of Rosemary Fisher, Sworn November 7, 2024
8. Receiver's Final Statement of Receipts and Disbursements as at November 7, 2024

I. APPOINTMENT AND BACKGROUND

1. This second report (“**Second Report**”) is filed by msi Spergel inc. (“**Spergel**”) in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of Vandyk – Backyard Humberside Limited (“**VBHL**”).
2. Vandyk – Backyard Humberside Limited is an Ontario corporation that owns and operated a 32,000 square foot multi-tenanted commercial building that is located at 10 Neighbourhood Lane, Toronto, ON (“**Real Property**”).
3. John Vandyk (“**Vandyk**”) is the President of VBHL.
4. On application made by Home Trust Company (“**Home Trust**”) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts Justice Act* (the “**CJA**”), Spergel was appointed as the Receiver over all of the assets, undertakings and properties of VBHL (“**Property**”) which excluded any interest VBHL may have in the property municipally known as 25 Neighbourhood lane, Toronto by the Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on March 5, 2024 (“**Receivership Order**”). A copy of the Receivership Order and Endorsement of the Honourable Justice Osborne are attached to this Second Report as **Appendices “1” and “2”**.
5. The Receiver retained Simpson Wigle Law LLP (the “**Receiver’s Counsel**”) as its independent legal counsel.
6. On July 25, 2024, the Receiver submitted its First Report to Court, dated July 25, 2024 (the “**First Report**”), which is attached to this Second Report as **Appendix “3”**. The First Report sought approval of the Court for an Order granting the following relief:
 - i. Approving this First Report of the Receiver dated July 25, 2024, and the appendices thereto (the “**First Report**”) and the activities of the Receiver described therein;
 - ii. approving the Receiver’s Final Statement of Receipts and Disbursements as at July 24, 2024;

- iii. approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale dated June 14, 2024 (the “**Sale Agreement**” or “**Supertrin APS**”) between Supertrin Commercial Properties Inc. (the “**Purchaser**” or “**Supertrin**”) and the Receiver for the purchase and sale of the property located at 10 Neighbourhood Lane, Toronto, Ontario (the “**Purchased Property**”) and attached as Confidential Appendix “1” to the First Report and authorizing the Receiver to do all things and execute all documentation necessary to complete the transaction contemplated therein which property is legally described as:

PART OF BLOCKS B,C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2-8,10-14 & 28, 66R28992 AS IN AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2-8, 10-14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791), AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT18, 66R28992 AS IN EB156894; CITY OF TORONTO

- iv. vesting the right, title and interest of the Debtor in the Property in and to Supertrin Commercial Properties Inc. (the “**Purchaser**”), free and clear of encumbrances;
- v. sealing the Confidential Appendices 1 through 5 to this First Report until the earlier of the completion of the Transaction or further Order of this Honourable Court;
- vi. approving the distribution of the net proceeds of sale of the property of Vandyk – Backyard Humberside Limited and authorizing and directing the Receiver to proceed to make the distributions and set aside the reserves recommended by the Receiver in the First Report of the Receiver;
- vii. an Order approving the Receiver’s fees for the period of up to and including July 19, 2024, in the amount of \$98,283.54, all of the foregoing being

inclusive of HST, as well as authorizing the Receiver to make payment of such amounts from the sale proceeds;

- viii. an Order approving the legal fees of SimpsonWigle LAW LLP, lawyers for the Receiver, for the period up to and including July 23, 2024, in the amount of \$24,167.32, all of the foregoing being inclusive of HST, as well as authorizing the Receiver to make payment of such amounts to SimpsonWigle LAW LLP from the sale proceeds;
 - ix. an Order authorizing the Receiver to make payment of any priority payables and all costs to complete the administration of the receivership from the sale proceeds; and,
 - x. such further and other relief as counsel may advise and this Court may permit.
7. On August 14, 2024, the Court granted the requested Order, attached to this Second Report as **Appendices “4” and “5”** is a copy of the Approval and Vesting Order and Endorsement of the Honourable Justice Cavanagh, dated August 14, 2024.

II. PURPOSE OF THIS SECOND REPORT AND DISCLAIMER

8. The purpose of this Second Report is to report to the Court regarding the Receiver’s activities and conduct since the Receiver’s First Report dated July 25, 2024, and to seek Orders from this Court:
- i. Approving this Second Report of the Receiver dated November 7, 2024, and the appendices thereto (the “**Second Report**”) and the activities of the Receiver described therein;
 - ii. approving the Receiver’s Final Statement of Receipts and Disbursements as at November 7, 2024;
 - iii. approving the distribution of the net proceeds of sale of the property of Vandyk – Backyard Humberside Limited and authorizing and directing the

- Receiver to proceed to make the distributions and set aside the reserves recommended by the Receiver in the Second Report of the Receiver;
- iv. an Order approving the Receiver's fees for the period of July 20, 2024 to and including October 31, 2024, in the amount of \$57,216.42, all of the foregoing being inclusive of HST, as well as authorizing the Receiver to make payment of such amounts from the sale proceeds;
 - v. an Order approving the legal fees of SimpsonWigle LAW LLP, lawyers for the Receiver, for the period of July 25, 2024 to and including November 6, 2024, in the amount of \$38,186.60, all of the foregoing being inclusive of HST, as well as authorizing the Receiver to make payment of such amounts to SimpsonWigle LAW LLP from the sale proceeds;
 - vi. effective upon filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtor has been completed to the satisfaction of the Receiver, discharging Spergel as the Receiver and granting certain ancillary relief in relation thereto.
 - vii. such further and other relief as counsel may advise and this Court may permit.
9. The Receiver will not assume responsibility or liability for losses incurred by the reader due to the circulation, publication, reproduction, or use of this Second Report for any other purpose.
 10. In preparing this Second Report, the Receiver has relied upon certain information provided to it by the Debtors and or its principals. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.
 11. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

III. ACTIONS OF THE RECEIVER SINCE THE FIRST REPORT

12. The Receiver, following the issuance of the Approval and Vesting Order (“**AVO**”) whether directly or through Counsel completed the following:
 - i. The agreement and Purchase of Sale with Supertrin Commercial Properties Inc., the sale closed on October 2, 2024;
 - ii. Distributed the funds in accordance with the AVO;
 - iii. Notified tenants of the sale of the building and direction of rent;
 - iv. Cancel insurance coverage;
 - v. Notified suppliers and utility companies of the sale of the building and to contact the purchaser regarding services post sale; and,
 - vi. Prepared and filed all statutory notices in accordance with the *Bankruptcy and Insolvency Act* (“**BIA**”).

IV. FEES AND DISBURSEMENTS OF THE RECEIVER AND COUNSEL

13. Attached to this Second Report as **Appendix “6”** is the Affidavit of Trevor Pringle, sworn November 7, 2024, (the “**Pringle Affidavit**”) which incorporates, by reference a copy of the time dockets pertaining to the receivership VBHL for the period of July 20, 2024 to and including October 31, 2024.
14. The fees and disbursements of the Receiver in respect of the receivership of VBHL for the period of July 20, 2024 to and including October 31, 2024, fees of \$57,216.42 (inclusive of HST and disbursements) were charged by Spergel as detailed in the Pringle Affidavit. This represents a total of 138.10 hours at an effective rate of \$366.65 per hour;
15. Attached to this Second Report as **Appendix “7”** is the Affidavit of Rosemary Fisher, sworn November 7, 2024, (the “**Fisher Affidavit**”) which incorporates, by reference a copy of the time dockets pertaining to the period from July 25, 2024 to and including November 7, 2024 (the “**Simpson Wigle Fee Period**”).

16. The fees and disbursements of Simpson Wigle in respect of the Simpson Wigle Fee Period amount to \$38,186.60 (inclusive of HST and disbursements), as detailed in the Fisher Affidavit.
17. The Receiver has reviewed the Receiver's Counsel's accounts and given the Receiver's involvement in this matter, the Receiver is of the view that all the work set out in Receiver's Counsel's accounts was carried out and was necessary. The hourly rates of the lawyers who worked on this matter were reasonable in light of the services required, and the services were carried out by lawyers with the appropriate level of experience.

V. FEE ACCRUAL

18. Provided that there is no opposition to the relief sought in this Second Report and that such relief is granted, the Receiver estimates that the additional fees (not including HST and disbursements) for itself and the Receiver's Counsel necessary to complete these proceedings will be as follows:
 - i. The Receiver, \$5,000 plus HST and disbursements; and,
 - ii. The Receiver's Counsel, SimpsonWigle Law, \$3,500 plus HST and disbursements.

VI. RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

19. Attached to this Second Report as **Appendix "8"** is a copy of the Receiver's Final Statement of Receipts and Disbursements as of November 7, 2024.

VII. RECEIVER'S PROPOSED DISTRIBUTION

20. As detailed in the Receiver's Final Statement of Receipts and Disbursements as of November 7, 2024, the Receiver holds proceeds from the sale of the Property in the amount of \$758,979.64.

21. The Receiver has been made aware of a dispute between the second mortgage lender on the Purchased Property (Kay Family Investments Inc.) and the Purchaser in respect of legal fees incurred by the second mortgage lender in the enforcement of its' security. The Receiver understands that Kay Family Investments intends to file responding materials on the within motion setting out its' legal costs requesting an Order for distribution of the Disputed Funds to it. In the event this Honourable Court does not deem fit to do so, or this matter is otherwise not resolved, the Receiver proposes to pay into court, (or as otherwise agreed or directed by this Honourable Court), the sum of \$41,833.62, (the "**Disputed Funds**"). Accordingly, after disposition of the Disputed Funds or part thereof, after payment of the fees and disbursements of the Receiver and the Receiver's Counsel including the Fee Accrual, the Receiver recommends that it be authorized to distribute the remainder of the proceeds, if any, to the 3rd mortgage holder 2233651 Ontario Limited.
22. The Receiver is not aware of the Debtor having any undertaking, property or assets other than the proceeds of sale from the Real Property.

VIII. DISCHARGE OF RECEIVER

23. Subsequent to the date of this Second Report, and prior to the Receiver's discharge, the Receiver proposes to attend to the following:
- i. Payment of distribution as identified above;
 - ii. Other residual and/or administrative matters in connection with the Receiver's appointed; and,
 - iii. Filing of the Receiver's certificate of discharge.

IX. RECOMMENDATION

24. For the reasons outlined in this Second Report, the Receiver respectfully requests that the Court grant the relief specified at Paragraph 8 of this Second Report.

Dated at Hamilton this 7th day of November 2024.

msi Spergel inc.

solely in its capacity as the Court-appointed
Receiver of Vandyk – Backyard Humberside Limited and not in its personal
or corporate capacity.

Per:



Trevor B. Pringle, CFE, CIRP, LIT
Partner

Title	AAVAND-R 2nd Report to Court
File name	AAVAND-R_Second_R...iver__FINAL_.docx
Document ID	3af67a5abb07cb119a87f2f13b2ee036f93d88b7
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History



SENT

11 / 07 / 2024

14:12:36 UTC-5

Sent for signature to Trevor Pringle (tpringle@spergel.ca)
 from hamiltonsign@spergel.ca
 IP: 104.171.204.20



VIEWED

11 / 07 / 2024

14:13:06 UTC-5

Viewed by Trevor Pringle (tpringle@spergel.ca)
 IP: 119.13.211.172



SIGNED

11 / 07 / 2024

14:13:19 UTC-5

Signed by Trevor Pringle (tpringle@spergel.ca)
 IP: 104.171.204.20



COMPLETED

11 / 07 / 2024

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The document has been completed.

APPENDIX 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) TUESDAY, THE 5th
JUSTICE OSBORNE) DAY OF MARCH 2024

B E T W E E N:

HOME TRUST COMPANY

Applicant

- and -

VANDYK – BACKYARD HUMBERSIDE LIMITED

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 (the "**Receiver**") without security, of all of the assets, undertakings and properties of Vandyk – Backyard Humberside Limited (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, excluding the Debtor's beneficial ownership interest in any unsold condominium units, parking units and storage lockers located and the

property municipally known as 25 Neighbourhood Lane, was heard this day at 330 University Avenue, Toronto, via videoconference.

ON READING the Affidavit of Sergiu Cosmin sworn February 6, 2024 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and the other parties listed on the Participation Information Sheet, no one else appearing for the parties listed on the service list although duly served as appears from the affidavits of service filed with the Court, 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 all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

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 \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; 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;

- (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, 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 \$250,000 (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 "B"** 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 Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide 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 motion, 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 Applicant 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.

SCHEDULE "A"

PIN: 07500-0079 (LT)

Property Description: PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2 - 8, 10 - 14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791) , AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT 18, 66R28992 AS IN EB156894; CITY OF TORONTO

SCHEDULE "B"

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 Vandyk – Backyard Humberside Limited (the "**Debtor**") 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 (Commercial List) (the "**Court**") dated the ____ day of _____, 2024 (the "**Order**") made in an application having Court file number CV-24-_____-00CL, 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 _____, 202__.

MSI SPERGEL INC., solely in its capacity as Receiver of the Debtor, and not in its personal capacity

Per: _____

Name:

Title:

HOME TRUST COMPANY
Applicant

-and-

VANDYK – BACKYARD HUMBERSIDE LIMITED
Respondent

Court File No. CV-24-00715191-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(appointing Receiver)**

CHAITONS LLP

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

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Tel: (416) 218-1128

Email: laurac@chaitons.com

Lawyers for the Applicant

APPENDIX 2



ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00715191-00CL

DATE: March 5, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: Home Trust Company vs. Vandyk – Backyard Humberside Ltd.

BEFORE JUSTICE: Justice Osborne

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Laura Culleton	Home Trust Company	laurac@chaitons.com
Harvey Chaiton		harvey@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Arif Raza	2233651 Ontario Ltd. and Haleem Muhammad	arifrazalaw@gmail.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Graham Phoenix	Kay Family Investments	gphoenix@ln.law
Bart Sarsh	MSI Spergel Inc.	sarshb@simpsonwagle.com

ENDORSEMENT:

1. The Applicant, Home Trust Company, (the “Applicant” or the “Lender”) seeks the appointment of msi Spergel Inc. as Receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*, of the assets, undertakings and properties of the Debtor, Vandyk-Backyard Humberside Limited acquired for or used in relation to a business carried on by the Debtor, including real property located at 10 Neighbourhood Lane, Toronto Ontario, but excluding any beneficial ownership interest of the Debtor in any unsold condominium units, parking units and storage lockers located at the adjacent property municipally known as 25 Neighbourhood Lane, Toronto, Ontario.
2. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.
3. Home Trust relies upon the Affidavit of Sergiu Cosmin sworn February 6, 2024 together with exhibits thereto.
4. The Debtor did not appear and was not represented. The Applicant seeks an order for substituted service given the repeated attempts to serve the Debtor and its principal.
5. The Debtor is an Ontario corporation that owns the property at 10 Neighbourhood Lane. That property consists of a two-story commercial building containing both retail and office space, together with 29 underground parking stalls, known as Stone Gate Plaza.
6. The Lender made available to the Debtor a non-revolving bridge loan in the amount of \$10 million pursuant to a commitment letter dated April 30, 2020 and amended April 19, 2022.
7. Proceeds of the loan were to be used to refinance existing first mortgage construction financing, provide equity repatriation and assist with financing costs.
8. The loan was originally to mature on May 1, 2022, which date was extended to May 2, 2024.
9. The indebtedness is secured a mortgage registered against the property in the principal amount of \$10 million and a general security agreement.
10. The Debtor has agreed to the appointment of a receiver upon the occurrence of an event of default.
11. Over the past five months, the Debtor has tried and failed to sell the property to repay the Lender. The lender has refrained from taking steps in reliance upon representations from and on behalf of the Debtor that an agreement of purchase and sale was imminent. While the closing date of one proposed agreement was extended from October and then again twice in December, 2023, it never closed.
12. The Debtor has failed to make any interest payments on the loan since September 1, 2023.
13. Demands were made and section 244 *BIA* Notices were served on January 8, 2024. The Lender demanded the amount of \$10,145,007.92 in respect of principal and interest.
14. No payments have been made by the Debtor since demand was made.

15. The property is subject, in addition to the mortgage in favour of the Lender, to three subordinate mortgages with principal amounts totaling in the aggregate \$5.35 million. There is also a construction lien of approximately \$10,000 registered against title.
16. The second mortgagee, Kay Family Investments, is represented in Court today. The third and fourth mortgagees, 2233651 Ontario Ltd. and Haleem Muhammad respectively, are also represented in Court today.
17. Accordingly, the Lender seeks the appointment of a Receiver today to take control of the property and realize on it. The proposed Receiver consents to the appointment. The relief sought is supported by the second mortgagee. Initially, counsel for the third and fourth mortgagees requested an adjournment of two weeks to allow for negotiations to permit his clients to attempt to reach an agreement to buy out either the prior ranking mortgages interests, or to buy the debtor. As more particularly described below, this was resolved.
18. The test for the appointment of a receiver pursuant to section 243 of the *BIA* or section 101 of the *CJA* is not in dispute. Is it just or convenient to do so?
19. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, 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. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.
20. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.
21. The appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage: *BCIMI Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at paras. 43-44.
22. As observed in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, the Supreme Court of British Columbia, citing *Bennett on Receivership*, 2nd ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25):
 - a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
 - b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
 - c. the nature of the property;

- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has a right to appointment under the loan documentation;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties; and
- p. the goal of facilitating the duties of the receiver.

23. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: "these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).

24. It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29.

25. Accordingly, is it just or convenient to appoint a receiver in the particular circumstances of this case?

26. In my view, it is, for the reasons set out above.

27. The indebtedness is clear, demands and enforcement notices were delivered, and no repayment has been made in any amount whatsoever since September, 2023 and certainly following the demand. The Debtor has been unable to sell the property to repay the indebtedness, or otherwise raise funds to repay the indebtedness.

28. Accordingly, I am satisfied that it is not only just *or* convenient to appoint a receiver today, but indeed that it is both just *and* convenient.

29. For all of these reasons, msi Spergel is appointed Receiver on the terms of the order I have signed today. The order is consistent with the Model Order of the Commercial List. I note that the beneficial interests

in the adjacent property that are carved out of the receivership are carved out because they are already the subject of a separate ongoing receivership. Accordingly, that carveout is appropriate.

30. Mr. Raza on behalf of the third and fourth mortgagees initially sought an adjournment of this motion as described above. However, that issue was resolved on the basis of what I would have expected in any event, namely that the Receiver will engage in discussions with Mr. Raza's clients and consider any offers to buy out either the indebtedness of the Applicant and the other prior mortgagee, or to buy out the Debtor more broadly. Those discussions will occur shortly.
31. If such an agreement can be reached, there is no reason the Receiver cannot be discharged relatively quickly. That is for another day. But in the meantime, the Receiver will have the ability to consider next steps. It is extremely unlikely that the Receiver could sell the property within the two week period to which Mr. Raza referred in any event.
32. An order for substituted service of originating process and these motion materials on the Debtor is appropriate and is granted. The Debtor is well aware of the situation, and virtually all of its other properties and businesses are in receivership already. The Applicant has attempted to serve the Debtor and its principal via the email to his known email address, and has attempted to physically serve the Debtor at the corporate address reflected in the Corporate Profile, all as reflected in the affidavits of service filed, and all without success. The order for substituted service is granted. I observe that in any event, the receivership order has the usual seven day comeback provision.
33. The Applicant will attempt to deliver to the Debtor and its principal this endorsement and the order I have signed today. In addition, the Receiver will attempt to make the Debtor further aware, by providing copies to the Receiver in respect of the Debtor's other properties.
34. Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.



Justice Osborne

Date: March 5, 2024

APPENDIX 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

HOME TRUST COMPANY

Applicant

- and -

VANDYK – BACKYARD HUMBERSIDE LIMITED

Respondent

**FIRST REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE RECEIVER OF
VANDYK – BACKYARD HUMBERSIDE LIMITED**

JULY 25, 2024

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APPENDICES

1. Order Appointing Receiver by The Honourable Justice Osborne dated March 5, 2024
2. Endorsement of the Honourable Justice Osborne, dated March 5, 2024
3. Redacted Listing Proposal of Cushman & Wakefield, dated April 3, 2024
4. Cushman & Wakefield Listing Agreement, dated April 11, 2024
5. Redacted Supertrin Commercial Properties Inc. Agreement of Purchase and Sale, dated June 14, 2024
6. Cushman & Wakefield Marketing Summary
7. Canada Revenue Agency's HST Deemed Trust Claim, dated July 8, 2024
8. Fee Affidavit of Trevor Pringle, Sworn July 24, 2024
9. Fee Affidavit of Rosemary Fisher, Sworn July 24, 2024
10. Receiver's Interim Statement of Receipts and Disbursements as at July 24, 2024
11. Home Trust Company Payout Statement, dated June 26, 2024
12. Kay Family Investments Inc. Draft Payout Statement, dated June 26, 2024
13. Title Search, dated January 31, 2024
14. The City of Toronto Property Tax Statement, dated July 9, 2024

CONFIDENTIAL APPENDICES

1. Unredacted Supertrin Commercial Properties Inc. Agreement of Purchase and Sale, dated June 14, 2024
2. Antec Appraisal Group - Appraisal Report for 10 Neighbourhood Lane, Toronto, ON
3. Colliers – Appraisal Report for 10 Neighbourhood Lane, Toronto, ON
4. Unredacted Listing Proposal of Cushman & Wakefield, dated April 3, 2024
5. Cushman and Wakefield Bid Summary

I. APPOINTMENT AND BACKGROUND

1. This first report (“**First Report**”) is filed by msi Spergel inc. (“**Spergel**”) in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of Vandyk – Backyard Humberside Limited (“**VBHL**”).
2. Vandyk – Backyard Humberside Limited is an Ontario corporation that owns and operated a 32,000 square foot multi-tenanted commercial building that is located at 10 Neighbourhood Lane, Toronto, ON (“**Real Property**”).
3. John Vandyk (“**Vandyk**”) is the President of VBHL.
4. On application made by Home Trust Company (“**Home Trust**”) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts Justice Act* (the “**CJA**”), Spergel was appointed as the Receiver over all of the assets, undertakings and properties of VBHL (“**Property**”) which excluded any interest VBHL may have in the property municipally known as 25 Neighbourhood lane, Toronto by the Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on March 5, 2024 (“**Receivership Order**”). A copy of the Receivership Order and Endorsement of the Honourable Justice Osborne are attached to this First Report as **Appendices “1” and “2”**.
5. The Receiver retained Simpson Wigle Law LLP (the “**Receiver’s Counsel**”) as its independent legal counsel.

II. PURPOSE OF THIS FIRST REPORT AND DISCLAIMER

6. The purpose of this First Report is to report to the Court regarding the Receiver’s activities and conduct since the Receiver’s appointment on March 5, 2024, and to seek Orders from this Court:
 - i. Approving this First Report of the Receiver dated July 25, 2024, and the appendices thereto (the “**First Report**”) and the activities of the Receiver described therein;

- ii. approving the Receiver's Interim Statement of Receipts and Disbursements as at July 24, 2024;
- iii. approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated June 14, 2024 (the "**Sale Agreement**" or "**Supertrin APS**") between Supertrin Commercial Properties Inc. (the "**Purchaser**" or "**Supertrin**") and the Receiver for the purchase and sale of the property located at 10 Neighbourhood Lane, Toronto, Ontario (the "**Purchased Property**") and attached as **Confidential Appendix "1"** to the First Report and authorizing the Receiver to do all things and execute all documentation necessary to complete the transaction contemplated therein which property is legally described as:

PART OF BLOCKS B,C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 & 18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2-8,10-14 & 28, 66R28992 AS IN AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2-8, 10-14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791), AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT18, 66R28992 AS IN EB156894; CITY OF TORONTO

- iv. vesting the right, title and interest of the Debtor in the Property in and to Supertrin Commercial Properties Inc. (the "**Purchaser**"), free and clear of encumbrances;
- v. sealing the Confidential Appendices 1 through 5 to this First Report until the earlier of the completion of the Transaction or further Order of this Honourable Court;
- vi. approving the distribution of the net proceeds of sale of the property of Vandyk – Backyard Humberside Limited and authorizing and directing the Receiver to proceed to make the distributions and set aside the reserves recommended by the Receiver in the First Report of the Receiver;

- vii. an Order approving the Receiver's fees for the period of up to and including July 19, 2024, in the amount of \$98,283.54, all of the foregoing being inclusive of HST, as well as authorizing the Receiver to make payment of such amounts from the sale proceeds;
 - viii. an Order approving the legal fees of SimpsonWigle LAW LLP, lawyers for the Receiver, for the period up to and including July 23, 2024, in the amount of \$24,167.32, all of the foregoing being inclusive of HST, as well as authorizing the Receiver to make payment of such amounts to SimpsonWigle LAW LLP from the sale proceeds;
 - ix. an Order authorizing the Receiver to make payment of any priority payables and all costs to complete the administration of the receivership from the sale proceeds; and,
 - x. such further and other relief as counsel may advise and this Court may permit.
7. The Receiver will not assume responsibility or liability for losses incurred by the reader due to the circulation, publication, reproduction, or use of this First Report for any other purpose.
8. In preparing this First Report, the Receiver has relied upon certain information provided to it by the Debtors and or its principals. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.
9. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

III. ACTIONS OF THE RECEIVER

10. Immediately upon its appointment, the Receiver directly or through Counsel attended to the following:

- i. secured possession of the premises, arranged for insurance coverage, and dealt with all necessary maintenance and repairs where applicable;
- ii. opened a dedicated trust account for the receivership entity and dealt with existing bank accounts;
- iii. retained a property manager to assist the Receiver with the day-to-day management, maintenance, and safeguarding of the property;
- iv. arranged for the registration of the Receiver's interest on the title to real property, where applicable;
- v. communicated with tenants with respect to occupation of the real property and instructed said tenants to pay all arrears and future rent to the Receiver which continues to date;
- vi. regularly attending at the premises to conduct inspections and deal with any operational issues;
- vii. arranging and managing ongoing supplier relationships and utility accounts;
- viii. monitoring, approving, and arranging payment for the ongoing operating expenses;
- ix. monitoring, depositing, and posting rental payments to the Receiver's trust account;
- x. monitoring and preparing monthly rent rolls;
- xi. verifying and maintaining proper licensing with respect to the premises including fire safety and elevator operations;
- xii. arranged for the continuation of various insurance policies in the name of the Receiver;
- xiii. overseeing the daily, weekly, monthly, and annual maintenance requirements for the property including the HVAC systems, landscaping, elevator, and equipment;
- xiv. communications with the City of Toronto with respect to the outstanding property taxes;

- xv. entered into a listing agreement with Cushman & Wakefield dated April 11, 2024;
- xvi. assisted Cushman & Wakefield with the compilation of information for the data room for the sale process;
- xvii. managed the sale process in conjunction with Cushman & Wakefield as detailed in this First Report;
- xviii. communicated with the various stakeholders including unsecured creditors throughout the receivership;
- xix. notified the office of the Superintendent of Bankruptcy of its appointment as Receiver;
- xx. prepared and filed all documents mandated by the *Bankruptcy and Insolvency Act.*; and
- xxi. communicated with the Canada Revenue Agency (“**CRA**”) with respect to setting up the Receiver’s Harmonized Sales Tax account.

IV. **SALES PROCESS**

- 11. Pursuant to the terms of the Receivership Order, the Receiver was empowered and authorized to, among other things, market any or all of the Debtors’ assets, including advertising and soliciting offers in respect of the assets and negotiating such terms and conditions of sale as the Receiver, in its discretion, deemed appropriate.
- 12. The sole asset under this Receivership Order is a commercial building located at 10 Neighbourhood Lane, Toronto, Ontario.
- 13. The Receiver engaged the services of Colliers International Realty Advisors Inc. (“**Colliers**”) and Antec Appraisal Group (“**Antec**”) to attend and conduct full narrative appraisals of the Real Property. The Receiver obtained appraisals in relation to the Real Property from Colliers on April 10, 2024, and from Antec on

March 27, 2024. Copies of the appraisal reports are attached to this First Report as **Confidential Appendices “2” and “3”**.

14. The Receiver requested sales and marketing proposals from three GTA commercial real estate brokers, Cushman & Wakefield (“**Cushman**”), Colliers International (“**Colliers**”), and CB Richard Ellis (“**CBRE**”). The Receiver chose Cushman & Wakefield’s proposal as their commission structure was lower, their valuation was in line with the appraisals received, and they were familiar with the market area. A copy of the sales and marketing proposal of Cushman & Wakefield with valuations redacted is attached to this First Report as **Appendix “3”**. The unredacted copy of the sales and marketing proposal is attached to this First Report as **Confidential Appendix “4”**.
15. The Receiver entered into an MLS Listing Agreement with Cushman dated April 11, 2024, at a list price of \$1.00 (the “**Listing Agreement**”). A copy of the Listing Agreement is attached to this First Report as **Appendix “4”**.
16. The sales process (“**Sale Process**”) was designed to ensure that the marketing process was fair and reasonable, and that prospective interested parties had the ability to make an offer to purchase the Real Property.
17. The principal elements of the Sale Process were as follows:
 - a. A transparent unpriced sale process with a bid deadline date;
 - b. As soon as was reasonably possible, Cushman distributed marketing material notifying prospective purchasers of the existence of the Sale Process and listed the property on the Multiple Listing Service (“**MLS**”), inviting prospective purchasers to express their interest in making an offer in respect of the Real Property, pursuant to the terms of the Sale Process;
 - c. Potential bidders that wished to commence due diligence would be required to execute a non-disclosure agreement (“**NDA**”);
 - d. Cushman in conjunction with the Receiver prepared a confidential information memorandum (“**CIM**”), which would provide, among other

things, information considered relevant to the Sale Process. The CIM was sent to each potential bidder;

- e. The Receiver and Cushman would give each bidder access to the due diligence materials and information relating to the Real Property;
 - f. Due diligence access included access to an electronic data room (“**Data Room**”), on-site inspections, and other matters which a potential bidder may reasonably request and to which the Receiver may agree;
 - g. A binding Agreement of Purchase and Sale (“**APS**”), based on a form of APS provided by the Receiver, was required to be submitted in writing to the Receiver by no later than June 10, 2024 (“**Bid Deadline**”);
18. Cushman widely marketed the subject real property to garner maximum interest and multiple offers to purchase by the set Bid Deadline date of June 10, 2024. Multiple offers were received by Cushman with respect to the Real Property. Attached to this First Report as **Confidential Appendix “5”** is a comparative summary of Offers received by the set bid deadline date.
19. The Receiver expended efforts to negotiate with Supertrin Commercial Properties Inc., with negotiations resulting in the Receiver accepting their firm offer on June 14, 2024 (the “**Offer**”). Attached to this First Report as **Appendix “5”** is a copy of the redacted Supertrin Agreement of Purchase and Sale (“**Supertrin APS**”).
20. Over the course of the sale process 48 Non-Disclosure Agreements were executed, 3 tours were provided to potential bidders and a total of 8 offers were received; attached to this First Report as **Appendix “6”** is a copy of Cushman’s sale process summary.
21. The Receiver is of the view that the sale process was conducted in a commercially reasonable manner and that the market was extensively canvassed pursuant to Cushman’s marketing efforts, as detailed above. Further, the Receiver is of the opinion that the efforts of Cushman through the listing of the Real Property on MLS

and their internal and external network have provided sufficient exposure of the Real Property to the market.

22. It is the opinion of the Receiver that the terms and conditions contained in the Supertrin APS are commercially reasonable in all respects and that the purchase price in the Supertrin APS is within market value for the Real Property, as evidenced by the appraisal values and is the best outcome in the circumstances. The Real Property is being sold on an “as is, where is” basis.
23. The Receiver has consulted with Home Trust, the first mortgagee, in respect to the Supertrin APS and Home Trust supports the completion of the sales transaction.
24. Therefore, the Receiver recommends that the Court approve the Supertrin APS. If the Transaction is approved, it will close in accordance with the terms of the Supertrin APS.
25. Accordingly, the Receiver is seeking, among other things, an Approval and Vesting Order in respect of the Transaction contemplated by the Supertrin APS.

V. REQUEST FOR A SEALING ORDER

26. The Receiver is seeking a sealing order in respect of the Confidential Appendices to this First Report as they each contain commercially sensitive information, the release of which prior to the completion of the sale transaction with Supertrin would be prejudicial to the stakeholders of VBHL.

VI. CANADA REVENUE AGENCY

27. On July 16, 2024, Spergel received a deemed trust claim from Canada Revenue Agency (“**CRA**”) for HST in the amount of \$1,752,200.21 with respect to the outstanding periods of October 31, 2020 to February 29, 2024. Attached to this First Report as **Appendix “7”** is a copy of CRA’s HST claim. The HST claim ranks behind the prescribed security interests of the first, second and third mortgages as it did not arise until after the collateral charges were registered on April 28, 2020, July 11, 2019 and October 11th, 2019 respectively.

VII. FEES AND DISBURSEMENTS OF THE RECEIVER AND COUNSEL

28. Attached to this First Report as **Appendix “8”** is the Affidavit of Trevor Pringle, sworn July 24, 2024, (the “**Pringle Affidavit**”) which incorporates, by reference a copy of the time docket pertaining to the receivership VBHL for the period to and including July 19, 2024.
29. The fees and disbursements of the Receiver in respect of the receivership of VBHL for the period to and including July 19, 2024, fees of \$98,283.54 (inclusive of HST and disbursements) were charged by Spergel as detailed in the Pringle Affidavit. This represents a total of 236.10 hours at an effective rate of \$368.36 per hour;
30. Attached to this First Report as **Appendix “9”** is the Affidavit of Rosemary Fisher, sworn July 24, 2024, (the “**Fisher” Affidavit**”) which incorporates, by reference a copy of the time docket pertaining to the period from February 7, 2024 to and including July 23, 2024 (the “**Simpson Wigle Fee Period**”).
31. The fees and disbursements of Simpson Wigle in respect of the Simpson Wigle Fee Period amount to \$24,167.32 (inclusive of HST and disbursements), as detailed in the Fisher Affidavit.
32. The Receiver has reviewed the Receiver’s Counsel’s accounts and given the Receiver’s involvement in this matter, the Receiver is of the view that all the work set out in Receiver’s Counsel’s accounts was carried out and was necessary. The hourly rates of the lawyers who worked on this matter were reasonable in light of the services required, and the services were carried out by lawyers with the appropriate level of experience.

VIII. RECEIVER’S STATEMENT OF RECEIPTS AND DISBURSEMENTS

33. Attached to this First Report as **Appendix “10”** is a copy of the Receiver’s Interim Statement of Receipts and Disbursements as of July 24, 2024.

IX. PROPOSED DISTRIBUTION

34. A title search conducted with respect to the Real Property on January 31, 2024, has indicated the following registrations on title in order of priority:
- i. A first mortgage in the principal amount of \$10,000,000.00 held by Home Trust, which was initially charged and registered on April 28, 2020. The Receiver has been provided with a payout statement from Home Trust for the total indebtedness dated June 26, 2024, which shows a balance outstanding of \$10,572,528.31 with interest accrued to June 26, 2024. The Home Trust payout statement (the “**Home Trust Payout Statement**”) is attached to this First Report as **Appendix “11”**.
 - ii. A second mortgage in the principal amount of \$2,000,000.00 held by Kay Family Investments Inc., which comprises an initial charge, registered on July 11, 2019 and postponed on April 28, 2020. The Receiver has been provided with a draft payout statement from Kay Family Investments Inc. (“**Kay Family**”) for the total indebtedness dated June 26, 2024, which shows a balance outstanding of \$1,267,415.69 with interest accrued to June 26, 2024. The Kay Family payout statement (the “**Kay Family Payout Statement**”) is attached to this First Report as **Appendix “12”**.
 - iii. A third mortgage in the principal amount of \$2,220,000.00 held by 2233651 Ontario Limited, which comprises an initial charge registered on October 11, 2019, and postponed on April 28, 2020.
 - iv. A fourth mortgage in the principal amount of \$1,150,000.00 held by Haleemah Muhammad, which comprises an initial charge registered on August 21, 2023.
 - v. A construction lien in the principal amount of \$9,473.00 held by Live Patrol Inc., which comprises an initial charge registered on November 22, 2023.

35. Attached to this First Report as **Appendix “13”** is a copy of the title search conducted on January 31, 2024.
36. The Receiver requested that Simpson Wigle review the security held by Home Trust and Kay Family. The Receiver has received the opinion from Simpson Wigle that, subject to customary assumptions and qualifications for opinions of this nature, the security interests in favour of Home Trust and Kay Family are valid and enforceable in the Province of Ontario.
37. The City of Toronto (“**Toronto**”) would have a priority charge to the existing mortgages in respect of property tax arrears that have accrued in respect of the Real Property. Attached to this First Report as **Appendix “14”** is a copy of the property tax statement issued by Toronto on July 9, 2024, confirming the balance owed, in the amount of \$474,792.06.
38. Accordingly, the Receiver is proposing to make a distribution (after payment of the fees and disbursements of both the Receiver and the Receiver’s Counsel, as outlined in this First Report) as follows:
 - i. To the City of Toronto in the amount of \$474,792.06 or such amount accrued at the closing of the Transaction for outstanding realty tax arrears;
 - ii. To Home Trust Company in the amount of \$10,572,528.31 plus interest, or such other party as Home Trust might direct, for the repayment of the First Mortgage held by Home Trust;
 - iii. To Kay Family Investments Inc. in the amount of \$1,267,416.69 plus interest, or such other party as Kay Family might direct, for the repayment of the Second Mortgage held by Kay Family;
 - iv. The Receiver anticipates a surplus in the estate after the above distribution. As the administration of the receivership is not completed, the Receiver proposes to retain the surplus proceeds to funds its further activities and contemplates the need for a further motion(s) to the Court for directions with regards to a future distribution and with respect to the Receiver’s discharge.

X. RECOMMENDATION

39. For the reasons outlined in this First Report, the Receiver respectfully requests that the Court grant the relief specified at Paragraph 6 of this First Report.

Dated at Hamilton this 25th day of July, 2024.

msi Spergel inc.

solely in its capacity as the Court-appointed
Receiver of Vandyk – Backyard Humberside Limited and not in its personal
or corporate capacity.

Per:



Trevor B. Pringle, CFE, CIRP, LIT
Partner

APPENDIX 4

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEDNESDAY, THE 14TH
JUSTICE CAVANAGH) DAY OF AUGUST, 2024

B E T W E E N:

HOME TRUST COMPANY

Applicant

- and -

VANDYK - BACKYARD HUMBERSIDE LIMITED

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by msi Spergel Inc. in its capacity as the Court-appointed receiver ("**Spergel**" or the "**Receiver**") of the assets, undertakings and properties of Vandyk- Backyard Humberside Limited ("**VBHL**" or the "**Debtor**") for an Order:

1. validating service of the Notice of Motion and the Motion Record in the manner effected by the Receiver and dispensing with service thereof on any party other than the parties served;
2. approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale (the "**Sale Agreement**") between the Receiver and Supertrin Commercial Properties Inc. (the "**Purchaser**") dated June 14,

2024 and appended to the First Report of the Receiver dated July 25, 2024 (the "**First Report**"),

3. vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**");
4. sealing the Confidential Appendices 1 through 5 to the First Report until the earlier of the completion of the transaction or further Order of this Honourable Court;
5. approving the First Report and the conduct, activities and actions to date;
6. approving the distribution of the net proceeds of sale of the Purchased Assets and authorizing and directing the Receiver to proceed to make the distributions and set aside the reserves recommended by the Receiver in the First Report;
7. authorizing the Receiver to make payment of any outstanding taxes and all costs to complete the administration of the receivership from the sale proceeds;
8. approving the Receiver's Interim Statement of Receipts and Disbursements;
9. approving the professional fees and disbursements of the Receiver, as well as authorizing the Receiver to make payment of such amounts from the sale proceeds; and,
10. approving the legal fees of SimpsonWigle LAW LLP, lawyers for the Receiver, as well as authorizing the Receiver to make payment of such amounts to SimpsonWigle LAW LLP from the sale proceeds,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, Home Trust Company, Kay Family Investments Inc. and Supertrin Commercial Properties Inc., no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Tanisha Lashley sworn July 26, 2024, filed:

1. **THIS COURT ORDERS** that service of the Notice of Motion and the Motion Record in the manner effected by the Receiver be and is hereby validated and service thereof upon any party other than the parties served is hereby dispensed with.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Osborne dated March 5, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute

oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. **THIS COURT ORDERS** that the Confidential Appendices 1 through 5 to the First Report be and are hereby sealed until the earlier of the completion of the Transaction or further Order of this Honourable Court.

10. **THIS COURT ORDERS** that the conduct, activities and actions of the Receiver, as set out in the First Report, are hereby approved.

11. **THIS COURT ORDERS** that the Receiver shall set aside the reserves as recommended in the First Report and shall make partial distribution of the net proceeds of the Transaction as follows:

- (1) To the City of Toronto in the amount of \$474,792.06 or such amount accrued at the closing of the Transaction for outstanding realty tax arrears;
- (2) To Home Trust Company in the amount of \$10,572,528.31 plus interest, or such other party as Home Trust might direct, for the repayment of the First Mortgage held by Home Trust; and,
- (3) To Kay Family Investments Inc., in the amount of \$1,267,416.69 plus interest and plus applicable taxed or agreed upon legal fees, or such other party as Kay Family might direct, for the repayment of the Second Mortgage held by Kay Family.

12. **THIS COURT ORDERS** that the Receiver is hereby authorized to make payment of any outstanding taxes and all costs to complete the administration of the receivership from the sale proceeds;

13. **THIS COURT ORDERS** that the Interim Receiver's Statement of Receipts and Disbursements, as set out in the First Report, is hereby approved.

14. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, SimpsonWigle LAW LLP, as set out in the First Report and the Fee Affidavits, are hereby approved and payment of same is hereby authorized.

15. **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.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-24-00715191-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

HOME TRUST COMPANY

Applicant

- and –

VANDYK - BACKYARD HUMBERSIDE LIMITED

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (the "**Court**") dated March 5, 2024, msi Spergel Inc. was appointed as the receiver (the "**Receiver**") of the undertakings, properties and assets of Vandyk – Backyard Humberside Limited (the "Debtor").

B. Pursuant to an Order of the Court dated August 14, 2024, the Court approved the agreement of purchase and sale made as of June 14, 2024 (the "**Sale Agreement**") between the Receiver and Supertrin Commercial Properties Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that

the conditions to Closing as set out in sections 12 and 13 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 12 and 13 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**msi Spergel Inc., in its capacity as
Receiver of the undertakings, properties
and assets of Vandyk – Backyard
Humberside Limited, and not in its
personal capacity**

Per: _____

Name: Trevor B. Pringle, CFE, CIRP,
LIT

Title: Partner

Schedule B – Purchased Assets

Property known municipally as 10 Neighbourhood Lane, Toronto, Ontario, and legally described as:

PART OF BLOCKS B,C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 1, 16 &18 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 2-8,10-14 & 28, 66R28992 AS IN AT4865050 & AT4865051; T/W EASEMENT OVER PTS 2-8, 10-14 & 28, 66R28992 AS IN AT4865049 (PARTIALLY RELEASED BY AT5347791), AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721;TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT OVER PT18, 66R28992 AS IN EB156894; CITY OF TORONTO

Schedule C – Claims to be deleted and expunged from title to Real Property

INSTRUMENT NO. AT5182926	Kay Family Investments Inc. Charge registered on July 11, 2019 in the amount of \$2,000,000.
INSTRUMENT NO. AT5182927	Kay Family Investments Inc. Notice of Assignment of Rents registered on July 11, 2019.
INSTRUMENT NO. AT5416487	Home Trust Company Charge registered on April 28, 2020 in the amount of \$10,000,000.
INSTRUMENT NO. AT5416488	Home Trust Company Notice of Assignment of Rents registered on April 28, 2020.
INSTRUMENT NO. AT5416489	Postponement registered on April 28, 2020 from Kay Family Investments Inc. to Home Trust Company.
INSTRUMENT NO. AT5416490	Postponement registered on April 28, 2020 from 2233651 Ontario Limited to Home Trust Company.
INSTRUMENT NO. AT5416491	Notice registered on April 28, 2020 from Vandyk – Backyard Humberside Limited to Kay Family Investments Inc.
INSTRUMENT NO. AT5531340	Notice registered on September 29, 2020 from Vandyk – Backyard Humberside Limited, Vandyk – Backyard Queensview Limited and Vandyk – Backyard Kingsmill Limited
INSTRUMENT NO. AT6094356	Notice registered on May 31, 2022 from Vandyk – Backyard Humberside Limited to Home Trust Company
INSTRUMENT NO. AT6454977	Land Restriction registered on November 6, 2023
INSTRUMENT NO. AT6464046	Live Patrol Inc. Construction Lien registered on November 22, 2023 in the amount of \$9,473.
INSTRUMENT NO. AT6519357	Live Patrol Inc. Certificate registered on February 26, 2024.
INSTRUMENT NO. AT6528833	msi Spergel Inc. Court Order registered on March 11, 2024.

INSTRUMENT NO. AT5413469

Transfer from Vandyk - Shoppes of Stonegate Limited to Vandyk - Backyard Humberside Limited registered on April 22, 2020

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

INSTRUMENT NO. EB156894	Transfer Easement registered on August 12, 1955
INSTRUMENT NO. EB160013	Agreement registered on October 24, 1955
INSTRUMENT NO. EB163037	Certificate registered as January 3, 1956
INSTRUMENT NO. EB177163	Agreement registered on November 19, 1956
INSTRUMENT NO. EB181933	Agreement registered on April 4, 1957
INSTRUMENT NO. EB186721	Bylaw registered on July 29, 1957
INSTRUMENT NO. EB188451	Agreement registered on September 6, 1957
INSTRUMENT NO. AT4242867	Notice registered on June 9, 2016
INSTRUMENT NO. 66R28992	Plan Reference registered on October 28, 2016
INSTRUMENT NO. AT4478657	Notice registered on October 28, 2016
INSTRUMENT NO. 66R29993	Plan Reference registered on April 13, 2018
INSTRUMENT NO. AT5200718	Land Registrar's Order registered on July 31, 2019
INSTRUMENT NO. AT5347788	Notice registered on January 22, 2020
INSTRUMENT NO. AT5347791	Transfer Release and Abandonment registered on January 22, 2020
INSTRUMENT NO. AT5531477	Transfer Release and Abandonment registered on September 29, 2020
INSTRUMENT NO. AT6402821	Haleemah Muhammad Charge registered on August 21, 2023 in the amount of \$1,150,000
INSTRUMENT NO. AT5261210	2233651 Ontario Limited Charge registered on October 11, 2019 in the amount of \$2,200,000.

HOME TRUST COMPANY
Applicant

-and- **VANDYK - BACKYARD HUMBERSIDE LIMITED**
Respondent

Court File No. CV-24-00715191-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

SimpsonWigle LAW LLP
1006 Skyview Drive, Suite 103
Burlington, Ontario
L7P 0V1

Rosemary A. Fisher (LSO# 32238T)
Email: fisherr@simpsonwigle.com
Tel: (905) 639-1052
Fax: (905) 528-9008

Lawyers for the Receiver, msi Spergel Inc.

APPENDIX 5



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00715191-00CL

DATE: 14 August 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: HOME TRUST COMPANY v. VANDYK - BACKYARD HUMBERSIDE LIMITED

BEFORE JUSTICE: CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Laura Culleton	Applicant	laurac@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Rosemary A. Fisher	Receiver, MSI Spergel Inc.	fisherr@simpsonwigle.com
R. Graham Phoenix	Kay Family Investments	gphoenix@ln.law
Arif Raza	2233651 Ontario Limited and Haleemah Muhammad	arifrazalaw@gmail.com

ENDORSEMENT OF JUSTICE CAVANAGH:

1. The Receiver brings this motion for an order:

- a. Approving the sale transaction contemplated by an Agreement of Purchase and Sale between the Receiver, as vendor, and Supertrin Commercial Properties Inc. (the “Purchaser”) dated June 14, 2024, in respect of the sale of real property located at 10 Neighbourhood Lane, Toronto Ontario.
 - b. Vesting the right, title, and interest of the Vandyk-Backyard Humberside Limited (the “Debtor”) in the Property and in and to the Purchaser.
 - c. Sealing the Confidential Appendices 1 through 5 to the First Report of the Receiver dated July 25, 2024, until the earlier of the completion of the transaction or further Order of this Court.
 - d. Approving the First Report of the Receiver and the conduct, activities, and actions to date.
 - e. Approving the distribution of the net proceeds of sale of the property and authorizing and directing the Receiver to proceed to make the distributions and set aside the reserves recommended by the Receiver in the First Report of the Receiver.
 - f. Authorizing the Receiver to make payment of any outstanding taxes and all cost to complete the administration of the receivership from the sale proceeds.
 - g. Approving the Receiver’s Interim Statement of Receipts and Disbursements.
 - h. Approving the professional fees of the Receiver and the fees of its counsel.
2. I have reviewed the First Report of the Receiver.
 3. I am satisfied that the sales process followed by the Receiver satisfies the *Soundair* factors.
 4. I am satisfied that the terms and conditions contained within the Agreement of Purchase and Sale are commercially reasonable.
 5. With respect to the requested sealing order, the requirements in the jurisprudence are satisfied.
 6. The parties represented at the hearing agree to the terms of an order.
 7. I am satisfied that the requested order should be made.
 8. Order to issue in form of Order signed by me today.

APPENDIX 6

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

HOME TRUST COMPANY

Applicant

- and -

VANDYK – BACKYARD HUMBERSIDE LIMITED

Respondents

AFFIDAVIT OF TREVOR PRINGLE
(sworn November 7, 2024)

I, **TREVOR PRINGLE**, of the City of Hamilton, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Licensed Insolvency Trustee with msi Spergel Inc. (“**MSI**”), the court-appointed Receiver (the “**Receiver**”) of all the assets, undertakings and properties of the Respondents. As such I have knowledge of the matters hereinafter deposed to.
2. MSI was appointed Receiver pursuant to the Order made by the Honourable Justice Osborne of the Ontario Superior Court of Justice on March 5, 2024.
3. Attached hereto as **Exhibit “A”** are true copies of the Receiver’s accounts with respect to professional fees incurred in respect of the receivership of Vandyk – Backyard Humberside Limited for the period of July 20, 2024, to October 31, 2024, in the amount of \$57,216.42, inclusive of HST and disbursements. This represents a total of 138.10 hours at an average rate of \$366.65 per hour. The accounts and supporting time dockets disclose in detail: the nature of the services rendered, the time expended by each person

**This is Exhibit “A”
To the Affidavit of Trevor Pringle
dated November 7, 2024**

A handwritten signature in blue ink, appearing to be 'Evan Scott McCullagh', written over a horizontal line.

**Evan Scott McCullagh,
a Commissioner etc, Province of
Ontario, for msi Spergel inc. Expires
October 6, 2026**

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SPERGEL

msi Spergel inc., Licensed Insolvency Trustees

Head Office: 200 Yorkland Blvd., Suite 1100

Toronto, ON., M2J 5C1

T: 416 497 1660 ● F: 416 494 7199

www.spergel.ca

November 7, 2024

Invoice #: 12850

VANDYK - BACKYARD HUMBERSIDE LIMITED
10 NEIGHBORHOOD LANE
TORONTO, ON

INVOICE

RE: VANDYK - BACKYARD HUMBERSIDE LIMITED

FOR PROFESSIONAL SERVICES RENDERED in the period from July 20, 2024 to November 7, 2024 in connection with the

Professional Services	Hours	Hourly Rate	Total
Trevor Pringle, CFE, CIRP, LIT	71.60	\$500.00	\$35,800.00
Evan McCullagh	56.80	\$225.00	\$12,780.00
Others	9.70	\$211.75	\$2,054.00
Total Professional Services	138.10	\$366.65	\$50,634.00
HST			\$6,582.42
Total			\$57,216.42

HST Registration #R103478103

(ADVANCED)



November 7, 2024

Invoice #: 12850

VANDYK - BACKYARD HUMBERSIDE LIMITED
10 NEIGHBORHOOD LANE
TORONTO, ON

INVOICE

INVOICE RECONCILIATION PAGE

Date	Staff	Memo	Hours	B-Rate	Amount
Professional Services					
2024-07-22	TPR	<i>correspondence/discussions re building maintenance; review site inspection photos; review Optimity Group garage door repair invoice; review general ledger; review legal correspondence; correspond with Rosemary Fisher, lawyer; review July rent roll</i>	0.90	\$500.00	\$450.00
2024-07-22	EMC	<i>Review photos and property management correspondence; lawyer correspondence re HST; review Optimity invoice; review Country Wide invoices; review DEL invoices;</i>	0.50	\$225.00	\$112.50
2024-07-23	TPR	<i>review and approve payment of DEL plumbing repair invoice; review general ledger; review and approve garage door repair; correspondence/discussions re building maintenance, Duka property manager, draft materials for court, July rent collection; review and approve payment of Country Wide landscaping invoices; review and approve cheque requisitions; conference call with Rosemary Fisher et al Simpson Wigle lawyers re motion material</i>	1.50	\$500.00	\$750.00
2024-07-23	EMC	<i>Review DEL, Optimity and Country wide invoices, prep CHQ REQs; review Optimity quote re spring repair, send approval; discussion with Arbana, DUKA; review draft WIP and Invoice, draft fee affidavit; discuss with TP; correspondence re outstanding rent;</i>	1.00	\$225.00	\$225.00
2024-07-23	EST	<i>Prepare documentation as required</i>	0.50	\$250.00	\$125.00



November 7, 2024

Invoice #: 12850

VANDYK - BACKYARD HUMBERSIDE LIMITED
 10 NEIGHBORHOOD LANE
 TORONTO, ON

INVOICE

2024-07-24	TPR	<i>correspondence/discussions re building maintenance, tenants, draft motion materials, sale process, utilities, insurance coverage, rent collection; review and sign fee affidavit; review general ledger; review legal correspondence; review draft notice of motion; review and make amendments to draft first report to court; review site inspection photos; review appendices to first report to court; review receivership order; review Colliers property appraisal; review Antec property appraisal; correspond/tdw Rosemary Fisher, lawyer re motion material, Supertrin APS, closing date; review HST statement of account; tdw Sergiu Cosmin, Home Trust; review endorsement of Justice Osborne; review Cushman & Wakefield listing proposal; review Supertrin agreement of purchase and sale; review interim statement of receipts and disbursements; review Home Trust mortgage payout statement; review Kay Family mortgage payout statement; review title search; review property tax statement; review COI; review draft AVO order; review Simpson Wigle legal fees affidavit</i>	3.50	\$500.00	\$1,750.00
2024-07-24	EMC	<i>Travel to site, walkthrough, update TP, photos; review and update appendices; review GL, prep interim SRD; review draft notice of motion; update report to court; finalize fee affidavit, review WIP; review COI insurance policy;</i>	3.00	\$225.00	\$675.00
2024-07-25	TPR	<i>review, make changes to and sign first report to court; review appendices to first report to court; review Simpson Wigle fee affidavit; review property tax statement; review Home Trust mortgage payout statement; review Kay Family mortgage payout statement; review general ledger; review CRA HST deemed trust claim; review Simpson Wigle independent legal opinion on 1st & 2nd mortgages; correspond with Rosemary Fisher, lawyer; discussions/correspondence re motion material, building maintenance, signage; review July rent roll; review Element Renovation roof repair/cleaning quotes; review Coastwide Contracting quotes; review legal correspondence</i>	2.10	\$500.00	\$1,050.00
2024-07-25	EMC	<i>Review final draft of report to court; review appendices and confidential appendices; discussion with Arbana re quotes for cleaning roof, caulking, et al; lawyer correspondence re purchaser requests;</i>	1.30	\$225.00	\$292.50
2024-07-25	GGO	<i>Review and approve disbursements.</i>	0.30	\$400.00	\$120.00



November 7, 2024

Invoice #: 12850

VANDYK - BACKYARD HUMBERSIDE LIMITED
 10 NEIGHBORHOOD LANE
 TORONTO, ON

INVOICE

2024-07-26	TPR	<i>discussions/correspondence re Supertrin APS, building maintenance, signage, pest control; review and approve Element Renovations roof cleanup quote; review general ledger; review Home Trust mortgage payout statement; review Kay Family Investments mortgage payout statement; review disclaimer; review rent roll; review interim statement of receipts and disbursements; correspond with Rosemary Fisher, lawyer; review legal correspondence; review motion record; review Duka property management correspondence; review and approve payment of Toronto Hydro July invoices; review property tax statement; review and approve payment of DEL plumbing invoices; review and approve payment of EMAR pest control invoice</i>	2.30	\$500.00	\$1,150.00
2024-07-26	EMC	<i>review motion material; review various quotes re roof cleaning, caulking repair, discuss and correspond on same; prep disclaimer, rent roll and SRD for purchaser; review property tax statement; review Toronto Hydro invoices, emar invoice, DEL invoices, prep CHQ REQs; discussion with Steve, Country Wide re cheques;</i>	1.00	\$225.00	\$225.00
2024-07-29	TPR	<i>correspondence/discussions re building maintenance, waste management, tenants, elevator service; review July rent roll; review general ledger; review and approve cheque requisition; review legal correspondence</i>	0.70	\$500.00	\$350.00
2024-07-29	EMC	<i>review payables, review rent roll, review Buck or Two lease, Buck or Two correspondence re common area power; Waste Management correspondence re improper use; discussion with Arbana re operations, OTIS service call;</i>	0.50	\$225.00	\$112.50
2024-07-30	TPR	<i>review motion record; review general ledger; correspondence/discussions re building maintenance, elevator service; review and approve payment of Del Plumbing invoice</i>	0.60	\$500.00	\$300.00
2024-07-30	EMC	<i>Review photos, DUKA correspondence re electrical and OTIS issue; correspond with Stonegate re August rent; correspondence and discuss with Gona, Hair Salon re August rent; review DEL statement, review DEL invoice, prep CHQ REQ</i>	0.50	\$225.00	\$112.50
2024-07-31	TPR	<i>correspondence/discussions re building maintenance, garage door, August rent collection, Enbridge account; review site inspection photos; review general ledger; review and approve payment of Akron Electrical Services invoice; review and approve cheque requisition; review August rent roll; review and approve payment of DEL plumbing invoice</i>	1.10	\$500.00	\$550.00



November 7, 2024

Invoice #: 12850

VANDYK - BACKYARD HUMBERSIDE LIMITED
 10 NEIGHBORHOOD LANE
 TORONTO, ON

INVOICE

2024-07-31	EMC	<i>Travel to site, walkthrough, meeting with Samantha, Stonegate re August Rent, Enbridge; meeting with Arbana, DUKA re operations, OTIS, Element (roof cleaning) et al, garage door issue; Buck or Two correspondence re elevator issue, discuss with Arbana, correspondence re update on elevator; review rent, update rent roll; review DEL invoice, prep CHQ REQ; further updates on Elevator;</i>	2.75	\$225.00	\$618.75
2024-08-01	TPR	<i>review August rent collection; review general ledger; discussions/correspondence re maintenance, insurance coverage extension; review NGIC certificate of insurance</i>	0.60	\$500.00	\$300.00
2024-08-01	EMC	<i>review GL: review and update rent roll; deposit req; correspondence with Richard, Master Insurance re renewal; review COI and information, rent roll, respond;</i>	0.75	\$225.00	\$168.75
2024-08-01	GGO	<i>Receive and review bank reconciliation.</i>	0.10	\$400.00	\$40.00
2024-08-02	TPR	<i>correspondence/discussions re building maintenance, landscaping, roof leak; review site inspection photos; review general ledger; review and approve payment of Duka August property management invoice; review August rent roll; review and approve payment of Element Renovations roof cleaning invoice</i>	1.00	\$500.00	\$500.00
2024-08-02	EMC	<i>Correspondence with Arbana, DUKA re Roof cleaning update, TSSA update, garage door, landscaping; review photos; review DUKA invoice, prep CHQ REQ; review Element invoice, prep CHQ REQ</i>	0.40	\$225.00	\$90.00
2024-08-06	TPR	<i>correspondence/discussions re maintenance, tenants, sub-leasing, August rent collection; review site inspection photos; review general ledger; review Clinic Plus IDA Pharmacy correspondence; review August rent roll; review and approve payment of Waste Management invoice; review and approve payment of City of Toronto water billing</i>	1.10	\$500.00	\$550.00
2024-08-06	EMC	<i>Review cheques received; review and update rent roll; review Waste Management and Toronto Water invoices, prep CHQ REQs; correspondence with Clinic Plus re sublease; review irrigation invoice, correspondence with Arbana, DUKA re invoice issued in error; review enbridge account, correspondence to Samantha, Stonegate re Enbridge account;</i>	1.00	\$225.00	\$225.00
2024-08-06	IFR	<i>Issue chqs, Deposits</i>	2.10	\$170.00	\$357.00



November 7, 2024

Invoice #: 12850

VANDYK - BACKYARD HUMBERSIDE LIMITED
 10 NEIGHBORHOOD LANE
 TORONTO, ON

INVOICE

2024-08-07	TPR	<i>review site inspection photos; review general ledger; correspondence/discussions re HVAC repair; review August rent roll</i>	0.40	\$500.00	\$200.00
2024-08-07	EMC	<i>Travel to site; walkthrough; meeting with Arbana, DUKA re operations, maintenance et al; review rent roll; Samantha, Stonegate correspondence; review GL; review Enbridge invoices and payments made, draft invoice; review critical suppliers, update schedule; correspondence re OTIS invoice;</i>	3.00	\$225.00	\$675.00
2024-08-08	TPR	<i>review August rent roll; review general ledger; tdw Sergiu Cosmin, Home Trust; discussions/correspondence re tenants, utilities, Duka; review and approve payment OTIS elevator service invoice; review CRA HST correspondence; correspond with Rosemary Fisher, lawyer; review site inspection photos; review August rent roll</i>	1.10	\$500.00	\$550.00
2024-08-08	GGO	<i>Review and approve disbursements.</i>	0.30	\$400.00	\$120.00
2024-08-08	EMC	<i>review OTIS invoice, prep CHQ REQ; discussion with Rushik, Clinic Plus re subleasing, status of receivership; discussion and correspondence with Dexter, Stonegate re Enbridge; review HST claim, discuss with TP, correspondence to Lawyer; review and update rent roll;</i>	1.00	\$225.00	\$225.00
2024-08-09	TPR	<i>discussions/correspondence re maintenance, August rent collection; review July HST return; review general ledger; review and approve cheque requisition; review CRA HST correspondence; review August rent roll</i>	0.80	\$500.00	\$400.00
2024-08-09	EMC	<i>review GL; review and prepare July HST return; prep CRA CHQ REQ; review rent received, follow up with outstanding tenants; updated rent roll;</i>	0.50	\$225.00	\$112.50
2024-08-12	TPR	<i>review Simpson Wigle legal invoice; review general ledger; review August rent roll; review and approve payment of H2 janitorial services invoice; correspond with Alan Rawn et al, Cushman & Wakefield re closing; review motion record; discussions re amended HST claim</i>	0.90	\$500.00	\$450.00
2024-08-12	EMC	<i>Discussion re HST claim; Cushman correspondence; review H2 invoice, prep CHQ REQ</i>	0.30	\$225.00	\$67.50



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2024-08-13	TPR	<i>review site inspection photos; review general ledger; review CRA HST claim; correspond/tdw's Rosemary Fisher, lawyer re HST claim, Court approval, closing extension request; review August rent roll; review Home Trust mortgage payout statement; correspond with Joel Goulding et al, Cushman & Wakefield re closing extension request; review legal correspondence; correspondence/discussions re August rent collection, tenants</i>	1.40	\$500.00	\$700.00
2024-08-13	EMC	<i>Cushman correspondence re purchaser extension; review photos and DUKA correspondence; discussion with Subhash, Clinic Plus re security deposit, sale update; review Vipul, Buck or Two correspondence re parking, et al; correspondence with Robert, Habit Dental re Rent; discussion with TP re HST claim;</i>	0.75	\$225.00	\$168.75
2024-08-14	TPR	<i>review motion record; review draft approval and vesting order; review execution search; review general ledger; review August rent roll; discussions/correspondence re garage door repair, parking, HVAC repair, rent collection; attend motion re approval of property sale and vesting order in Virtual Court (via Zoom); review legal correspondence; correspond/tdw Rosemary Fisher, lawyer; call Sergiu Cosmin, Home Trust; review 3rd & 4th mortgage discharge statements; review amended draft AVO; review OTIS elevator service invoice; review site inspection photos; correspond with Joel Goulding, Cushman & Wakefield</i>	2.90	\$500.00	\$1,450.00
2024-08-14	EMC	<i>Travel to site, walkthrough, meeting with Arbana, DUKA re operations, maintenance, Buck or Two issues: parking garage, parking, HVAC, et al; review CDC quote, discuss same;</i>	2.00	\$225.00	\$450.00
2024-08-15	TPR	<i>review legal correspondence; discussions/correspondence re closing date extension, illegal parking, HVAC repair, tenants; review, make changes to and execute purchaser's proposed amendment to Supertrin agreement of purchasers and sale closing date; review general ledger; tdw's Sergiu Cosmin, Home Trust; correspond/tdw Rosemary Fisher, lawyer; review August rent roll; review Approval, Vesting and Partial Distribution Order; review Endorsement of Justice Cavanagh; review and approve cheque requisition; review and approve payment of Simpson Wigle legal fees; review site inspection photos</i>	2.10	\$500.00	\$1,050.00



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2024-08-15	EMC	<i>Discussion re purchaser update; lawyer correspondence re same; Vipul, Buck or Two multiple correspondence re customer parking, HVAC and underground parking; discussions with Arbana, DUKA re Buck or Two; review photos and DUKA correspondence; review endorsement and vesting order; amendment to APS: Review simpsonwagle and spergel invoices, prep CHQ REQs; review Enbridge invoices;</i>	1.30	\$225.00	\$292.50
2024-08-15	LLE	<i>Posted documents to the website.</i>	0.30	\$110.00	\$33.00
2024-08-16	EMC	<i>review TSSA inspection report;</i>	0.10	\$225.00	\$22.50
2024-08-19	EMC	<i>correspondence with Stonegate re Enbridge account;</i>	0.10	\$225.00	\$22.50
2024-08-20	EMC	<i>review photos and DUKA correspondence;</i>	0.10	\$225.00	\$22.50
2024-08-21	EMC	<i>Travel to site; walkthrough, meeting with Arbana, DUKA re operations, maintenance updates, receivership update et al; Arkon correspondence re cheque;</i>	2.00	\$225.00	\$450.00
2024-08-22	EMC	<i>Discussion with Arbana re FOB issue; correspondence re service call;</i>	0.20	\$225.00	\$45.00
2024-08-23	EMC	<i>Review GL; draft interim report and SRD; review Arkon invoice; review photos and DUKA correspondence; review property tax statement;</i>	0.75	\$225.00	\$168.75
2024-08-26	TPR	<i>correspondence/discussions re maintenance, tenants, closing date, additional deposit; review site inspection photos; review and approve garage door repair quote; review and approve cheque requisition; review general ledger; review TSSA elevator inspection report; review amendment to Supertrin agreement of purchase and sale; review interim statement of receipts and disbursements; review and sign 246(2) report; correspond/tdw's Rosemary Fisher, lawyer re additional deposit; call/correspond with Sergiu Cosmin, Home Trust; correspond with Joel Goulding et al, Cushman & Wakefield re additional deposit; review wire details; review August rent roll; review and approve payment of OTIS elevator service invoice; review legal correspondence</i>	2.50	\$500.00	\$1,250.00
2024-08-26	EMC	<i>Review Arkon invoice, prep updated CHQ REQ; optimity correspondence re Garage door, approve quote; Cushman and lawyer correspondence re sale deposit;</i>	0.30	\$225.00	\$67.50



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2024-08-27	TPR	<i>review and approve payment of hydro invoices; review general ledger; review and approve payment of gas bill; discussions/correspondence re building maintenance, additional deposit; correspond/tdw Rosemary Fisher, lawyer re additional deposit; correspond with Joel Goulding, Cushman & Wakefield re additional Supertrin deposit; correspond with Sergiu Cosmin, Home Trust; review wire confirmation; review site inspection photos</i>	1.50	\$500.00	\$750.00
2024-08-27	EMC	<i>Review Toronto Hydro and Enbridge Invoices, prep CHQ REQs; correspondence re September rent;</i>	0.30	\$225.00	\$67.50
2024-08-28	TPR	<i>review site inspection photos; review general ledger; correspondence/discussions re Supertrin \$200,000 additional deposit, building maintenance, OTIS elevator service, September rent collection; review September rent roll; correspond with Sergiu Cosmin, Home Trust; correspond with Rosemary Fisher, lawyer; correspond with Joel Goulding et al, Cushman & Wakefield; review and approve mileage cheque requisition; review and approve payment of EMAR monthly pest control invoice</i>	1.60	\$500.00	\$800.00
2024-08-28	EMC	<i>Travel to site; walkthrough; meeting with Arbana, DUKA re operations; meeting with Dexter, Stonegate re September rent, update; review GL and wire from purchaser; review post dated cheques, review and update rent roll;</i>	2.00	\$225.00	\$450.00
2024-08-29	TPR	<i>review September rent roll; review general ledger; review site photos</i>	0.30	\$500.00	\$150.00
2024-08-29	EMC	<i>review cheques, review and update rent roll;</i>	0.10	\$225.00	\$22.50
2024-08-30	TPR	<i>review September rent roll; review general ledger; review and approve payment of Country Wide Landscaping invoice; correspondence/discussions re property maintenance; review site inspection photos</i>	0.80	\$500.00	\$400.00
2024-08-30	EMC	<i>review country wide invoice, prep CHQ REQ; review landscaping and snow removal quote; review photos;</i>	0.30	\$225.00	\$67.50
2024-09-03	TPR	<i>review site inspection photos; review general ledger; review September rent roll; correspond with Joel Goulding et al, Cushman & Wakefield re statement of adjustments; correspond with Rosemary Fisher, lawyer; review legal correspondence</i>	0.90	\$500.00	\$450.00
2024-09-03	EMC	<i>review photos; correspondence with Arbana re meeting; review GL and deposits; review and update rent roll;</i>	0.30	\$225.00	\$67.50
2024-09-03	GGO	<i>Receive and review bank reconciliation.</i>	0.10	\$400.00	\$40.00



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 TORONTO, ON

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2024-09-04	TPR	<i>review and approve payment of Duka property management invoice; review general ledger; review draft statement of adjustments re sale of property; correspond with Gokcin Nalsok et al, Simpsom Wigle lawyers re SOA; tdw Rosemary Fisher, lawyer; review September rent roll; correspondence/discussions re maintenance; review site inspection photos</i>	1.20	\$500.00	\$600.00
2024-09-04	EMC	<i>Review DUKA invoice, prep CHQ REQ; Travel to site, walk through, meeting with Arbana, DUKA re operations, maintenance; review draft statement of adjustments;</i>	2.00	\$225.00	\$450.00
2024-09-05	TPR	<i>review draft statement of adjustments; review general ledger; discussions/correspondence re data room; review Home Trust mortgage payout statement; review Kay Family mortgage payout statement; review property tax statement; correspond with Rosemary Fisher, lawyer; review first report to court; review approval and vesting order; correspond with Sergiu Cosmin, Home Trust; review rent roll; correspond with Joel Goulding et al, Cushman & Wakefield re Supertrin; correspond with Gokcin Nalsok, Simpson Wigle</i>	1.70	\$500.00	\$850.00
2024-09-05	EMC	<i>Review property tax statement; review correspondence re purchaser information; review and update rent roll;</i>	0.30	\$225.00	\$67.50
2024-09-05	IFR	<i>Deposits, issue chqs.</i>	1.50	\$170.00	\$255.00
2024-09-06	TPR	<i>review updated Home Trust mortgage payout statement; review updated Kay Family Investments mortgage payout statement; review updated draft statement of adjustments; review Kay Family mortgage register & wire payment instructions; review legal correspondence; review general ledger; correspond/tdw Gokcin Nalsok et al, Simpson Wigle lawyers re credit bid, draft SOA; correspond with Joel Goulding et al, Cushman & Wakefield; discussion with Rosemary Fisher, lawyer; review September rent roll</i>	1.60	\$500.00	\$800.00
2024-09-06	EMC	<i>Correspondence with F45 re rent; review draft statement of adjustments, review and update critical supplier list; review and update rent roll;</i>	0.30	\$225.00	\$67.50



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2024-09-09	TPR	<i>review Supertrin APS amendment re closing date extension; review general ledger; review September rent collection; correspond with Joel Goulding et al, Cushman & Wakefield re additional deposit; review September rent roll; tdw Sergiu Cosmin, Home Trust re Supertrin extension request; review and approve payment of H2 Enhance janitorial services invoice; review and approve payment of Waste Management invoice; correspondence/discussions re HVAC repair</i>	1.50	\$500.00	\$750.00
2024-09-09	EMC	<i>review photos; review H2 invoice, prep CHQ REQ; review WM invoice, prep CHQ REQ</i>	0.30	\$225.00	\$67.50
2024-09-09	HSI	<i>Banking EFT's and wire and transaction's</i>	2.20	\$220.00	\$484.00
2024-09-10	TPR	<i>review site inspection photos; review general ledger; review September rent roll; review Supertrin APS amendment to extend closing date; correspond with Joel Goulding, Cushman & Wakefield; correspond with Rosemary Fisher & Gokcin Nalsok, Simpson Wigle lawyers re closing; review and approve payment of Enbridge bill; correspondence/discussions re maintenance, insurance coverage, garage door repair; correspond with Gus Dal Colle, Antec</i>	1.50	\$500.00	\$750.00
2024-09-10	EMC	<i>review photos and video from DUKA re garage door; review enbridge invoice, prep CHQ REQ; correspondence with Robert, Masters re Insurance; review and update rent roll; review HST assessment;</i>	0.50	\$225.00	\$112.50
2024-09-10	MMA	<i>Approved cheque release.</i>	0.20	\$500.00	\$100.00
2024-09-11	TPR	<i>review September rent roll; review general ledger; discussions/correspondence re building maintenance, sale process; correspond with Gokcin Nalsok et al, Simpson Wigle lawyers re closing documents; review and execute closing documents including assignment of leases; receivers certificate, direction re funds, s.116 statutory declaration; receipt for funds and acknowledgement & direction re vesting order; tdw Sergiu Cosmin, Home Trust; correspond with Joel Goulding, Cushman & Wakefield</i>	1.70	\$500.00	\$850.00
2024-09-11	EMC	<i>Travel to site, walkthrough, meeting with Arbana, DUKA re operations, maintenance, et al; discussion with TP; review closing documents; review payables; review and update rent roll;</i>	2.50	\$225.00	\$562.50
2024-09-12	EMC	<i>Cushman correspondence re sale extension;</i>	0.10	\$225.00	\$22.50
2024-09-12	TPR	<i>correspond with Joel Goulding et al, Cushman & Wakefield re Supertrin APS closing date extension</i>	0.20	\$500.00	\$100.00



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2024-09-13	EMC	<i>DUKA correspondence; review enbridge statements; Lawyer correspondence re security deposits; review GL; review critical supplier list;</i>	0.50	\$225.00	\$112.50
2024-09-13	TPR	<i>correspond with Joel Goulding et al, Cushman & Wakefield re Supertrin APS closing date extension; review legal correspondence; tdw Rosemary Fisher, lawyer; tdw Sergiu Cosmin, Home Trust</i>	0.90	\$500.00	\$450.00
2024-09-16	TPR	<i>discussions/correspondence re insurance coverage, property closing, tenant issues; correspond with Joel Goulding et al, Cushman & Wakefield re Supertrin APS closing extension amendment; correspond with Rosemary Fisher et al, Simpson Wigle re tendering; review general ledger; review and execute amendment to Supertrin agreement of purchase and sale re closing date extension; tdw Sergiu Cosmin, Home Trust; review September rent roll; review and approve payment of Optimity Group garage door repair invoice; correspond/tdw Gokcin Nalsok, lawyer re statement of adjustments, property closing; review disbursement; review tenant correspondence; review site inspection photos</i>	3.20	\$500.00	\$1,600.00
2024-09-16	EMC	<i>Review TSSA correspondence; review Optimity invoice, prep CHQ REQ; review MSGG back up re reimbursement; review amendment to APS; correspondence re insurance renewal;</i>	0.60	\$225.00	\$135.00
2024-09-17	TPR	<i>correspondence/discussions re tenants issues, deposit wire transfer; review general ledger; review and approve cheque requisition; review amendment to Supertrin agreement of purchase and sale; review legal correspondence; correspond with Gokcin Nalsok et al, Simpson Wigle lawyers re additional deposit; review wire transfer confirmation; correspond with Sergiu Cosmin, Home Trust; correspond with Joel Goulding et al, Cushman & Wakefield</i>	1.50	\$500.00	\$750.00
2024-09-17	EMC	<i>Review MSGG back up, prep CHQ REQ; discussion with TP re Buck or Two correspondence, review Buck or Two Lease; review DUKA notes, draft response; correspondence re deposit; review GL; review wire transfer, prep deposit req;</i>	1.00	\$225.00	\$225.00
2024-09-18	TPR	<i>review site inspection photos; review general ledger; discussions/correspondence re maintenance</i>	0.40	\$500.00	\$200.00
2024-09-18	EMC	<i>Travel to site; walkthrough, meeting with Arbana, DUKA re operations, maintenance, et al; review photos;</i>	1.50	\$225.00	\$337.50



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2024-09-19	TPR	<i>review September rent roll; review general ledger; review security guard quotes; correspondence/discussions re security, maintenance; review Duka property management correspondence</i>	0.70	\$500.00	\$350.00
2024-09-19	EMC	<i>Review photos; review GL; review security quotes; correspondence re heating quote</i>	0.30	\$225.00	\$67.50
2024-09-20	TPR	<i>review accounts payable; review general ledger; review legal correspondence; correspond with Gokcin Nalsok & Rosemary Fisher, Simpson Wigle lawyers re closing adjustments; review site inspection photos; correspondence/discussions re farmers market, insurance extension</i>	1.00	\$500.00	\$500.00
2024-09-20	EMC	<i>review photos and DUKA correspondence; review OTIS invoice;</i>	0.20	\$225.00	\$45.00
2024-09-23	EMC	<i>Review photos re F45 complaint and DUKA walkthrough; various correspondence with DUKA re Farmer's market, F45, Leak at Stonegate; correspondence re insurance renewal</i>	0.40	\$225.00	\$90.00
2024-09-24	TPR	<i>correspondence/discussions re farmers market, insurance coverage, building maintenance, property closing, tenants; review site inspection photos; review general ledger; review Element Renovations roof repair quote; review legal correspondence; correspond with Gokcin Nalsok et al, Simpson Wigle lawyers re property closing; review and approve payment of City of Toronto invoice</i>	1.30	\$500.00	\$650.00
2024-09-24	EMC	<i>discussion with Arbana re site visit; correspondence with Dexter, Stonegate re October rent; correspondence re F45 drainage issue in entry way;</i>	0.30	\$225.00	\$67.50
2024-09-25	TPR	<i>correspondence/discussions re building maintenance, insurance policy renewal; review general ledger; review October rent roll; review accounts payable; review legal correspondence; correspond with Gokcin Nalsok et al, Simpson Wigle lawyers re closing; review site inspection photos</i>	1.10	\$500.00	\$550.00
2024-09-25	EMC	<i>review rent roll; review post dated cheques; review Toronto Hydro Invoices; discussion with Robert, Masters insurance, memo to file; Travel to site, walkthrough, meeting with Arbana, DUKA;</i>	2.00	\$225.00	\$450.00



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2024-09-26	TPR	<i>correspondence/discussions re books & records, insurance policy extension, property closing; review Home Trust mortgage payout statement; review and execute Notice and Direction to Tenants; correspond with Gokcin Nalsok et al, Simpson Wigle lawyers re property closing; review revised statement of adjustments; review general ledger; review application record; review parcel register; review 3rd mortgage; call Sergiu Cosmin, Home Trust; review legal correspondence; review and approve payment of Otis elevator invoice; review and approve payment of Capital Fire invoice; review and approve payment of Toronto Hydro invoices; review Master Insurance correspondence; review and approve cheque requisition; review formal binder of insurance; tdw Gokcin Nalsok, lawyer; review draft statement of receipts and disbursements</i>	2.70	\$500.00	\$1,350.00
2024-09-26	EMC	<i>Review capital fire invoice, correspondence re amendments; correspondence with Naomi, Fuller re books and records; review updated Capital Fire Invoices, review OTIS invoice, review Toronto Hydro Invoices, prep CHQ REQs; review GL, prep interim SRD; review insurance renewal documents;</i>	1.00	\$225.00	\$225.00
2024-09-27	TPR	<i>correspondence/discussions re tenants, maintenance, farmers market COI; review site inspection photos; review general ledger; review October rent roll; review legal correspondence</i>	0.60	\$500.00	\$300.00
2024-09-27	EMC	<i>review photos; correspondence re garbage wheel, service call; correspondence re Stonegate COI; review Emar invoice; discussion with Karen re books and records;</i>	0.30	\$225.00	\$67.50
2024-09-30	EMC	<i>Vipul, Buck or Two correspondence re break in; various discussions and correspondence with Arbana, DUKA re Buck or Two; discussion with Karen, Vandyl re security; correspondence with creditor; review photos;</i>	0.75	\$225.00	\$168.75
2024-09-30	GGO	<i>Receive nd review bank reconciliation.</i>	0.10	\$400.00	\$40.00
2024-10-01	EMC	<i>Review rent roll; Travel to Vandyk Head Office, meeting with Karen Guitar, review books and records; update TP; review Country wide invoice, review Karen Invoice; discussion with Arbana, DUKA re Buck or Two request, photos, etc; correspondence re closing; review contractor/supplier list, update; draft cancelation of service letter;</i>	3.25	\$225.00	\$731.25



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2024-10-01	TPR	<i>correspondence/discussions re break-in at Buck or Two, creditors, books & records; review site inspection photos; correspond with Joel Goulding et al, Cushman & Wakefield; correspond with Sergiu Cosmin, Home Trust; review legal correspondence; correspond with Gokcin Nalsok, Simpson Wigle lawyers re closing</i>	1.00	\$500.00	\$500.00
2024-10-02	TPR	<i>discussions/correspondence re October rent cheques, Buck or Two break-in, real estate commission, property closing; review site inspection photos; review GIS Windows & Doors quote; review legal correspondence; review general ledger; review October rent collection; review Home Trust accrued interest calculation; review and approve August & September HST returns; review updated statement of adjustments; review wire details; review Kay Family Investments mortgage discharge statement & mortgage register; review and sign notice to tenants; review and sign notice to suppliers; review and approve payment of Country Wide landscaping invoice; review Duka property management invoice for October; review and approve payment of Guitar casual labour invoice; review and approve payment of Emar pest control invoice; correspond/tdw Sergiu Cosmin, Home Trust re closing; review October rent roll; review Cushman & Wakefield draft commission invoice</i>	3.10	\$500.00	\$1,550.00
2024-10-02	EMC	<i>Draft notice to tenants and suppliers re closing; review statement of adjustments; review payouts; discussions; review supplier list; review country wide, emar and karen invoices, prep CHQ REQ; review DUKA photos; discussion with Arbana, DUKA: correspondence with Cushman re invoice; review property tax statement; finalize tenant letter, issue to tenants; finalize supplier letters, correspondence with suppliers re sale of building; review cushman invoice; discussion with TP re closing, insurance et al; discussion with Arbana, DUKA re sale closed; correspondence with Cushman re sale closed; correspondence with lawyer re closing, keys, supplier list;</i>	3.00	\$225.00	\$675.00



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2024-10-03	TPR	<i>correspondence/discussions re property closing, courier keys, wire deposit/transfers, insurance cancellation, rent collection; review general ledger; review statement of adjustments; review Home Trust mortgage payout statement; review and sign insurance cancellation letter; correspond with Gokcin Nalsok et al, Simpson Wigle lawyers re wire transfer; review site inspection photos; review Simpson Wigle wire transfer confirmation; review property tax payment confirmation; review legal correspondence; review CRA HST claim; review and approve distribution to Home Trust, first mortgagee; review Kay Family Investments mortgage payout statement; correspond with Graham Phoenix, Loopstra Nixon LLP lawyers for Kay Family Investments; review deposits; correspond with Sergiu Cosmin, Home Trust</i>	2.50	\$500.00	\$1,250.00
2024-10-03	EMC	<i>Review payouts for Home Trust, Kay Family, Cushman, draft CHQ REQs; finalize and issue insurance letter; arrange courier re keys; correspondence with suppliers re sale of building; review GL, correspondence with banking; correspondence with TSSA; correspondence with Toronto Hydro; review deposits, prep deposit reqs; review and update rent roll; finalzie home trust CHQ REQ, discussion with banking re same;</i>	1.50	\$225.00	\$337.50
2024-10-04	TPR	<i>review October rent roll; review general ledger; discussions/correspondence re wire transfers, insurance coverage, tenants, suppliers; correspond with Graham Phoenix, Loopstra Nixon lawyers for Kay Family Investments; review Kay Family Investments mortgage discharge statement; review approval and vesting order; review and approve wire transfer to Loopstra Nixon LLP; review Supertrin Commercial Properties COI; review wire confirmation; review legal correspondence; review Duka property management correspondence</i>	1.90	\$500.00	\$950.00
2024-10-04	EMC	<i>finalize kay family cheque req; review GL; review and update rent roll; correspondence with Tenant; discussion with Steve, Country wide re final invoice, next steps; correspondence with Arbana, DUKA re contact information</i>	0.40	\$225.00	\$90.00



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2024-10-07	TPR	<i>discussions/correspondence re October rent cheque, purchaser; review general ledger; correspond with Joel Goulding et al, Cushman & Wakefield; correspond with Rosemary Fisher, lawyer; review Cushman & Wakefield listing agreement; review and approve payment of real estate commission; review and approve payment of Capital Fire invoices; review and approve payment of H2 janitorial invoice; review and approve payment of Waste Management invoice; review legal correspondence; review CRA correspondence; review October rent roll</i>	1.70	\$500.00	\$850.00
2024-10-07	EMC	<i>correspondence with DUKA re invoice; review H2, capital fire and waste management invoices, prep CHQ REQs; review Cushman invoice, prep CHQ REQ; correspondence re rent received;</i>	0.50	\$225.00	\$112.50
2024-10-08	TPR	<i>discussions/correspondence re property manager, October rent cheques, Cushman wire transfer; review general ledger; review accounts payable</i>	0.50	\$500.00	\$250.00
2024-10-08	EMC	<i>Review Toronto Hydro final invoices; discussion with Domenic, Waste Management; correspondence with waste management and Aseg re irrigation; correspondence with purchaser re rent cheques;</i>	0.50	\$225.00	\$112.50
2024-10-08	IFR	<i>Deposits, Issue chqs, postings, wire trfs.</i>	2.00	\$170.00	\$340.00
2024-10-09	EMC	<i>review Toronto Hydro invoices, prep CHQ REQs; correspondence and discussion with Haris, Supertrin re Rent CHQs;</i>	0.30	\$225.00	\$67.50
2024-10-09	TPR	<i>review and approve payment of final hydro invoices; discussions/correspondence re October rent cheques; review general ledger</i>	0.50	\$500.00	\$250.00
2024-10-10	EMC	<i>discussion with Haran re cheq; review Toronto hydro correspondence re final billing;</i>	0.20	\$225.00	\$45.00
2024-10-16	TPR	<i>discussions/correspondence re October rent cheque, legal fees, HST returns, books & records; review general ledger; review legal correspondence; correspond with Rosemary Fisher et al, Simpson Wigle lawyers</i>	0.90	\$500.00	\$450.00
2024-10-16	EMC	<i>discussion with Haris, Supertrin re rent cheques, books and records;</i>	0.10	\$225.00	\$22.50
2024-10-18	EMC	<i>Meeting with Haris, Supertrin re cheques, drawings, leases;</i>	0.30	\$225.00	\$67.50
2024-10-21	TPR	<i>review legal correspondence; review general ledger</i>	0.20	\$500.00	\$100.00



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VANDYK - BACKYARD HUMBERSIDE LIMITED
 10 NEIGHBORHOOD LANE
 TORONTO, ON

INVOICE

2024-10-22	TPR	<i>review and approve payment of Duka Property Management invoice; review G/L; correspond with Gokcin Nalsok et al, Simpson Wigle lawyers; review closing documents including APS, AVO, purchaser's direction re title, bring down certificate, environmental indemnity, HST certificate, director resolution, undertaking to readjust</i>	1.10	\$500.00	\$550.00
2024-10-22	EMC	<i>review revised DUKA invoice, prep CHQ REQ; review first report, AVO order, begin draft 2nd report; review GL, draft interim SRD;</i>	2.00	\$225.00	\$450.00
2024-10-23	TPR	<i>review legal correspondence; review Royal Bank letter of credit documentation; correspond with Rosemary Fisher, lawyer; review general ledger</i>	0.50	\$500.00	\$250.00
2024-10-24	EMC	<i>Finalize 1st draft of the 2nd report to court; review enbridge final invoice; review supplier list, review final bills, follow up with suppliers on final bills;</i>	1.30	\$225.00	\$292.50
2024-10-24	TPR	<i>review and make amendments to draft second report to court; correspond with Rosemary Fisher, lawyer; review appendices to second report including receivership order, approval and vesting order, endorsements, draft interim statement of receipts and disbursements; review G/L</i>	1.00	\$500.00	\$500.00
2024-10-28	TPR	<i>review legal correspondence; correspond with Rosemary Fisher, lawyer; review general ledger</i>	0.30	\$500.00	\$150.00
2024-10-29	TPR	<i>review draft second report to court with Simpspon Wigle amendments; review general ledger; review and approve payment of Capital Fire final invoices</i>	0.50	\$500.00	\$250.00
2024-10-29	EMC	<i>Review Capital Fire invoices, prep CHQ REQs; correspondence re same; review lawyers changes on report to court;</i>	0.30	\$225.00	\$67.50
2024-10-30	TPR	<i>review Supertrin correspondence; review general ledger</i>	0.20	\$500.00	\$100.00
2024-10-31	TPR	<i>discussions/correspondence re October rent collection; tdw Rosemary Fisher, lawyer</i>	0.30	\$500.00	\$150.00
2024-10-31	EMC	<i>capital fire correspondence re outstanding invoices; discussion with Haris, Supertrin re rent received before closing;</i>	0.20	\$225.00	\$45.00
Professional Services Total:			138.10		\$50,634.00

APPENDIX 7

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

HOME TRUST COMPANY

Applicant

- and -

VANDYK - BACKYARD HUMBERSIDE LIMITED

Respondent

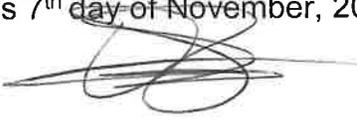
**AFFIDAVIT OF ROSEMARY FISHER
(Sworn: November 7, 2024)**

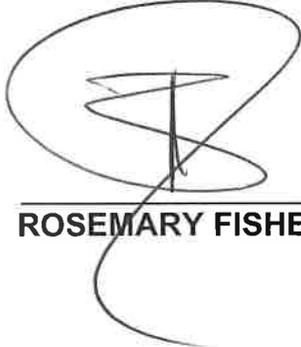
I, Rosemary Fisher, of the City of Burlington, in the Province of Ontario **MAKE
OATH AND SAY:**

1. I am a partner with SimpsonWigle Law LLP, the legal counsel to the Court-appointed Receiver (the "**Receiver**") of Vandyk- Backyard Humberside Limited (the "**Debtor**"), and, as such, have knowledge of the matters deposed to herein, except where such knowledge is stated to be based on information and belief, in which case I state the source of the information and verily believe such information to be true.
2. The accounts attached hereto and referenced below and the work done as reflected therein was necessary.
3. The Receiver was appointed, without security, of the assets, undertakings and properties of the Debtor by Court Order dated March 5th, 2024.
4. In our capacity as legal counsel to the Receiver, we have prepared a Statement of

Account in connection with our role detailing our services rendered and disbursements incurred for the period July 25, 2024, through to and including November 6, 2024, for the sum of \$38,186.60, inclusive of HST and disbursements. Attached hereto and marked as Exhibit "A" to this my Affidavit is a true copy of the Statement of Account.

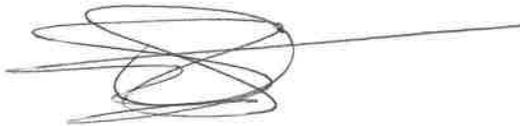
5. This Affidavit is made in support of a Motion to, *inter alia*, approve the receipts and disbursements of the Receiver and the accounts of its counsel and for no improper purpose.

SWORN before me at the City of)
Burlington, in the Province of Ontario)
This 7th day of November, 2024)
)
_____)
A Commissioner, etc.
Kathryn Osborne, LSO No. 31227S



ROSEMARY FISHER

This is **Exhibit "A"** referred to in the Affidavit of Rosemary A. Fisher sworn November 7, 2024

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Commissioner for Taking Affidavits (or as may be)
Kathryn Osborne, LSO No. 31227S



INVOICE

MSI Spergel Inc.
Att: Trevor Pringle
21 King Street West
Hamilton, ON
L8P 4W7, CAN

Account Name	RECEIVERSHIP OF VANDYK – BACKYARD HUMBERSIDE LIMITED - SECURED CREDITOR: HOME TRUST COMPANY		
Your Ref	Trevor Pringle	Invoice No.	INV01-20120
Our Ref	42/MAT88233	Date	08 Nov 2024
Account No.	MAT88233/CNT876	Page	1 of 5

Date	Description	FE	Amount excl. Tax	Tax Amount
FEES				
16 Jul 24	engaged in review of Kay security;	42		
22 Jul 24	review email from A. Raza; reply;	42		
23 Jul 24	telephone call with A. Raza;	42		
24 Jul 24	preparation of Fee Affidavit; preparation of Motion cover and index pages;	TL		
24 Jul 24	preparation of Fee Affidavit for execution; revisions to draft Order;	TL		
24 Jul 24	telephone call with T. Pringle re CRA credit bid and closing; review Fee Affidavit; email to A. Raza; review email from A. Raza re closing; discussion with client; email to A. Raza; email exchanges re finalizing materials;	42		
25 Jul 24	revisions to draft Order;	TL		
25 Jul 24	work on Notice of Motion; put together final Report of the Receiver with appendices attached; revisions to Motion cover and index pages; preparation of Motion Record and clean copy of draft Order for filing; preparation of Affidavit of Service;	TL		
25 Jul 24	engaged in review of revised 5th Report; notes thereon; revisions to same;	42		
26 Jul 24	preparation of Motion Record for service and email to parties serving same; preparation of sworn Affidavit of Service and draft Order for filing; file materials online;	TL		
26 Jul 24	review email from client re Rent Roll and property tax; email to A. Raza re foregoing;	42		
29 Jul 24	email to Commercial List office re Confidential Appendices;	TL		
29 Jul 24	review email from G. Phoenix re fees; reply;	42		
30 Jul 24	engaged drafting closing documents	115		
31 Jul 24	review and finalize closing documents and send to buyer's solicitor	115		
08 Aug 24	email to Commercial List office re Caselines invitation;	TL		
08 Aug 24	Upload motion materials to Caselines and invite interested parties;	TL		
08 Aug 24	email to and between Arif re status of closing documents;	115		
09 Aug 24	email to Commercial List office re Confidential Appendices;	TL		
09 Aug 24	review email from client; advise purchaser; review email from A. Raza; reply;	42		

Account No.	MAT88233/CNT876	Invoice No.	INV01-20120	Date	08 Nov 2024	Page	2 of 5
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Date	Description	FE	Amount excl. Tax	Tax Amount
12 Aug 24	preparation of Participant Information form; upload to Caselines;	TL		
13 Aug 24	Upload updated CRA HST Claim to Caselines.	TL		
13 Aug 24	review email from T. Pringle and discussion; memo to clerk re NOA (GST); preparation for approval Motion;	42		
13 Aug 24	review email from A. Raza; reply; email to J. Goulding; email to client; review email from A. Raza; reply; discussion; report to client;	42		
14 Aug 24	revisions to Draft Order; upload to Caselines and email to registrar with same attached;	TL		
14 Aug 24	review email from G. Phoenix; review emails from A. Raza re mortgage instruments;	42		
14 Aug 24	attendance in Court re Approval and Vesting Motion; discussion with client;	42		
14 Aug 24	engaged drafting revised Order;	42		
15 Aug 24	review email from G. Phoenix; reply; review email from A. Raza re expunged instrument; review email from J. Goulding re Agreement of Purchase and Sale amendment; email to A. Raza; discussion with client;	42		
15 Aug 24	telephone call with A. Raza; advise client;	42		
15 Aug 24	review email from Court; forward to client and broker; review email from client re initialled amendment; email to J. Goulding; A. Raza re amendment;	42		
26 Aug 24	review email from T. Pringle; email to A. Raza; review reply; report to client;	42		
26 Aug 24	review email from client re deposit;	42		
27 Aug 24	email to A. Raza;	42		
30 Aug 24	review response from Arif re comments to documents; revised direction re title and undertaking to readjust and respond to Arif accordingly.	115		
03 Sep 24	review tax bill and do tax lookup to calculate tax adjustments; calculate rent adjustments and draft statement of adjustments and email T. Pringle, R. Fisher re same;	115		
03 Sep 24	review email from client; reply;	42		
04 Sep 24	email received from Mr. Raza and email T. Pringle, R. Fisher re same; revise statement of adjustments;	115		
04 Sep 24	telephone call with T. Pringle re Statement of Adjustments;	42		
05 Sep 24	review statements and revise statement of adjustments and email to T. Pringle and R. Fisher;	115		
05 Sep 24	review email from client; email to Phoenix;	42		
06 Sep 24	speak with City of Toronto, order tax certificate to confirm o/s amount; call with T. Pringle re same; revised statement of adjustments and email;	115		
06 Sep 24	email Mr. Raza statement of adjustments and respond to his inquiries;	115		
09 Sep 24	review email from client re deposit;	42		
09 Sep 24	review email from client; reply and discussion; review email from A. Raza;	42		
10 Sep 24	review email from G. Phoenix; reply; review email from client;	42		
10 Sep 24	email to A. Raza re closing;	42		
11 Sep 24	amend and finalize closing documents and send to T. Pringle; receipt and review of signed documents	115		
12 Sep 24	review email from A. Raza; discussion with G. Nalsok; review further email from A. Raza; reply;	42		
12 Sep 24	review email from Goulding and client re extension;	42		
12 Sep 24	telephone call with T. Pringle; G. Nalsok;	42		
13 Sep 24	engaged in review of multiple emails re extension; deposits;	42		
13 Sep 24	emails to Spergel re security deposits; meet with R. Fisher to discuss matter.	115		
16 Sep 24	review amendment extension agreement and reply;	115		
16 Sep 24	review email from T. Pringle; reply; further exchanges;	42		

Account No.	MAT88233/CNT876	Invoice No.	INV01-20120	Date	08 Nov 2024	Page	3 of 5
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Date	Description	FE	Amount excl. Tax	Tax Amount
17 Sep 24	review email from A. Razza; report to client; further exchanges re deposit received;	42		
19 Sep 24	email to Mr. Raza re adjustments;	115		
20 Sep 24	receipt of email from Mr. Raza re security deposits; email from T. Pringle confirming status of security deposits; review vesting order to confirm such claims extinguished and assist R. Fisher in drafting reply;	115		
20 Sep 24	review emails from A. Raza; reply; review emails from client; reply; reply to A. Raza;	42		
20 Sep 24	review email from A. Raza; draft reply;	42		
22 Sep 24	review of correspondence with client and opposing counsel re Vesting Order;	217		
24 Sep 24	email from and respond to Loopstra Nixon; emails to and between T. Pringle re closing; call City of Toronto to obtain updated figures; email to 1st and 2nd mortgagee lawyers to obtain updated statements;	115		
25 Sep 24	emails to mortgagees re ETA on updated statements; email T. Pringle; recalculate statement of adjustments and email T. Pringle;	115		
25 Sep 24	prepare direction re rents and email to T. Pringle to sign;	115		
26 Sep 24	emails to and between T. Pringle; emails to and between Mr. Raza; reply to Mr. Raza concerning the inquiry re rents and Home Trust;	115		
26 Sep 24	email Home Trust to obtain breakdown; follow up with G. Phoenix;	115		
26 Sep 24	emails to and between G. Phoenix re closing and fees;	115		
01 Oct 24	emails to and between A. Raza and Kay's solicitor re Discharge Statement and interest calculation; emails to and between J. Schwartz, A. Raza re closing and funding; review and sign DRA and email out;	115		
01 Oct 24	prepare and sign undertaking to remit property tax and email to A. Raza;	115		
01 Oct 24	prepare closing package; email from Mr. Raza and respond with closing package; further email to Mr. Raza re Kay Discharge Statement;	115		
02 Oct 24	email from L. Culleton re home trust interest calculation; prepare and forward to A. Raza;	115		
02 Oct 24	review and amend payout calculations to 1st and 2nd mortgagees; email T. Pringle re same;	115		
02 Oct 24	attend to writ search; amend application for vesting order and email A. Raza re same; engaged drafting banking memo re property tax payment;	115		
02 Oct 24	attend to closing of this matter;	115		
03 Oct 24	attend to wiring funds to Receiver; prepare banking for property tax payment;	115		
03 Oct 24	email to and between Mr. Raza re supplier and tenant list; email re insurance bond; email to Mr. Raza delivering tax payment confirmation;	115		
04 Oct 24	email to Mr. Raza re updating information;	115		
07 Oct 24	engaged in review of multiple exchanges re sale of property; review email from client re publish sale; reply;	42		
08 Oct 24	receipt of buyer info and email E. McCullough re same;	115		
16 Oct 24	review email from A. Raza; review and report; discussion with D. Rosenblatt re MCAP; LC's; email from MCAP re LC's;	42		
16 Oct 24	email to A. Raza;	42		
21 Oct 24	preparation of Hearing Request Form re distribution and discharge motion; email to Commercial List office re same;	TL		
21 Oct 24	email to Interested parties re availability for Motion;	TL		
22 Oct 24	prepare and finalize report on this matter and email out to Receiver;	115		
22 Oct 24	engaged in meeting with G. Nalsok re LC; email to D. Rosenblatt; reply;	42		
23 Oct 24	review email from R. Fisher re LC involving City of Toronto;	115		
23 Oct 24	review email from D. Rosenblatt; reply and report to Receiver;	42		

Date	Description	FE	Amount excl. Tax	Tax Amount
25 Oct 24	review email from client re draft report; engaged in review of same and revisions thereto; review email from G. Phoenix re fees; reply;	42		
30 Oct 24	review email from D. Rosenblatt; reply; email to G. Nalsok;	42		
31 Oct 24	preparation of Notice of Motion and blacklined Distribution and Discharge Order;	TL		
01 Nov 24	engaged in review of draft Notice of Motion and Order; discuss with Receiver; email to A. Raza; G. Phoenix; preparation of Fee Affidavit; engaged in review of documents; work on discharge materials;	42		
03 Nov 24	review email from R. Kallio re City of Toronto L/C; reply; review email from City of Toronto; reply;	42		
06 Nov 24	review email from G. Phoenix; report to client; discussion with client; G. Phoenix; review email from G. Phoenix;	42		
06 Nov 24	review email from G. Phoenix; report to client; email to G. Phoenix;	42		
06 Nov 24	revising Receiver's 2nd Report;	42		
06 Nov 24	review email from G. Nalsok with attachments; email to Commercial List office re electronic seal for Approval and Vesting Order;	TL		
06 Nov 24	review email from Commercial List Office and upload Order and Endorsement to the JSO portal for stamping;	TL		
TOTAL FEES			\$ 33,313.50	\$ 4,330.76

DISBURSEMENTS

Trustee's Motion Record	\$ 339.00	- *
Tax Certificate	\$ 85.15	- *
Writ of Seizure and Sale Search - Taxable	\$ 3.50	\$ 0.46
Writ of Seizure and Sale Search - No Tax	\$ 12.85	- *
Wire Fee	\$ 45.00	- *
Photocopies	\$ 5.10	\$ 0.66
Sheriff Certificates	\$ 50.60	- #
TOTAL DISBURSEMENTS	\$ 541.20	\$ 1.12

TOTAL FEES AND DISBURSEMENTS

\$ 33,854.70

TOTAL TAX @ 13.00%

\$ 4,331.88

TOTAL DUE ON THIS INVOICE

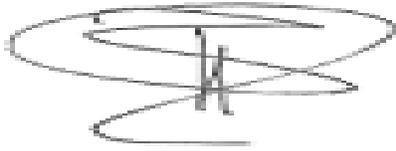
\$ 38,186.58

Payable upon Presentation (0 Days)

Code	Fee Earner	Time	Rate/hr	Total Fees
217	Daniel R. Lilko	0.20	345.00	69.00
115	Gokcin Nalsok	38.90	530.00	20,617.00
42	Rosemary Fisher	18.40	600.00	11,040.00
TL	Tanisha Lashley	8.60	150.00	1,290.00
TL	Tanisha Lashley	1.70	175.00	297.50

Account No.	MAT88233/CNT876	Invoice No.	INV01-20120	Date	08 Nov 2024	Page	5 of 5
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SimpsonWigle LAW LLP



Rosemary Fisher

In accordance with Section 33 of the Solicitors Act, interest will be charged at the rate of 6.0% per annum on unpaid fees, charges or disbursements calculated from a date that is 30 days after this statement is delivered.

H.S.T Registration Number is R122007156

HOME TRUST COMPANY
Applicant

-and- VANDYK - BACKYARD HUMBERSIDE LIMITED
Respondent

Court File No. CV-24-00715191-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF ROSEMARY A. FISHER

SimpsonWigle LAW LLP

1006 Skyview Drive, Suite 103
Burlington, Ontario
L7P 0V1

Rosemary A. Fisher (LSO# 32238T)

Email: fisherr@simpsonwigle.com

Tel: (905) 639-1052

Fax: (905) 528-9008

Lawyers for the Receiver, msi Spergel Inc.

APPENDIX 8

District of Ontario
Division No. 09 - Mississauga
Estate No. 32-159411

**In the matter of the Receivership of
Vandyk - Backyard Humberside Limited
Receiver's Final Statement of Receipts and Disbursements
as of November 7, 2024**

RECEIPTS

Building and Land	\$ 13,224,943.25
Rental Income	628,364.25
HST Collected	80,160.81
Interest	<u>17,261.15</u>

TOTAL RECEIPTS

\$ 13,950,729.46

DISBURSEMENTS

Payment to Secured Creditors	\$ 12,148,957.72
Property Taxes	572,245.21
Repairs and Maintenance	127,933.65
Commission	100,000.00
Receiver's Fees	86,969.50
HST Paid	49,215.25
HST Remitted	36,014.42
Legal Fees	21,400.20
Utilities	22,139.50
Outside Consulting	13,749.98
Appraisal Fees	9,276.00
Travel	2,405.41
Casual Labour	560.00
Filing Fee, Ascend License, Search Fees, Courier	552.98
Stock Taking and Possession	<u>330.00</u>

TOTAL DISBURSEMENTS

\$ 13,191,749.82

Net Receipts over Disbursements

\$ 758,979.64 E&OE

TAB C

Court File No. CV-24-00715191-00CL_____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEEKDAY TUESDAY, THE # 26TH
JUSTICE)
DAY OF MONTH NOVEMBER,
20YR 2024

B E T W E E N:

HOME TRUST COMPANY PLAINTIFF

Applicant Plaintiff

- and -

VANDYK - BACKYARD HUMBERSIDE LIMITED DEFENDANT

Respondent Defendant

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by msi Spergel Inc. ~~[RECEIVER'S NAME]~~ in its capacity as the Court-appointed receiver ("Spergel" or the "**Receiver**") of the undertakings, properties and assets of Vandyk- Backyard Humberside Limited ~~[DEBTOR]~~ ("VBHL" or the "**Debtor**"), for an order:

1. if necessary, abridging and validating the time for and manner of service of the Notice of Motion and the Motion Record in the manner effected by the Receiver and an Order dispensing with service thereof on any party other than the parties served such that this motion is properly returnable on November 26, 2024;

2. approving the activities of the Receiver as set out in the Second ~~#~~Report of the Receiver dated ~~[DATE]~~ November 7, 2024 (the "Second **Report**");

1.3. approving the Receiver's Final Statement of Receipts and Disbursements dated November 7, 2024;

4. approving the fees and disbursements of the Receiver and its counsel;

2.5. approving the payment into Court of the Disputed Funds, as defined in the Second Report;

3.6. approving the distribution of the remaining proceeds available in the estate of the Debtor and authorizing and directing the Receiver to proceed to make the distributions and set aside the reserves recommended by the Receiver in the Second Report; [and]

4.7. discharging [RECEIVER'S NAME]msi Spergel Inc. as Receiver of the undertakings, properties and assets of the Debtor; and,

5.8. releasing [RECEIVER'S NAME]msi Spergel Inc. from any and all liability, as set out in paragraph 65 of this Order¹,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report, the affidavits of the Receiver and its counsel as to fees (the "**Fee Affidavits**"), and on hearing the submissions of counsel for the Receiver, the Second Mortgagee and the Third Mortgagee, no one else appearing although served as evidenced by the Affidavit of Service of [NAME]Tanisha Lashley sworn [DATE]November , 2024, filed²;

1. THIS COURT ORDERS that the time for and manner of service of the Notice of Motion and the Motion Record be and is hereby abridged and validated and any further service thereof is hereby dispensed with such that the within Motion is properly returnable on this day.

4.2. THIS COURT ORDERS that the activities of the Receiver, as set out in the Second Report, are hereby approved.

¹ If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.

² This model order assumes that the time for service does not need to be abridged.

2.3. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Second Report and the Fee Affidavits, are hereby approved.

4. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands, as follows:
~~to [NAME OF PARTY]³~~

(a) Payment into Court of the sum of \$41,833.62 in respect of the Disputed Funds, as defined in the Second Report; and,

~~(b) The remainder of the proceeds, if any, to the third mortgage holder, 2233651 Ontario Limited.~~

4.5. THIS COURT ORDERS that upon payment of the amounts set out in paragraph ~~4.3~~ hereof [and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Report], the Receiver shall be discharged as Receiver of the undertakings, properties and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of ~~[RECEIVER'S NAME]msi Spergel Inc.~~ in its capacity as Receiver.

5.6. THIS COURT ORDERS AND DECLARES that ~~[RECEIVER'S NAME]msi Spergel Inc.~~ is hereby released and discharged from any and all liability that ~~[RECEIVER'S NAME]msi Spergel Inc.~~ now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of ~~[RECEIVER'S NAME]msi Spergel Inc.~~ while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, ~~[RECEIVER'S NAME]msi Spergel Inc.~~ is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could

³~~This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.~~

have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.]⁴

⁴~~The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.~~

HOME TRUST COMPANY
Applicant

-and-

VANDYK - BACKYARD HUMBERSIDE LIMITED
Respondent

Court File No. CV-24-00715191-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD
(RETURNABLE NOVEMBER 26, 2024)**

SimpsonWigle LAW LLP
1006 Skyview Drive, Suite 103
Burlington, Ontario
L7P 0V1

Rosemary A. Fisher (LSO# 32238T)

Email: fisherr@simpsonwigle.com

Tel: (905) 639-1052

Fax: (905) 528-9008

Lawyers for the Receiver, msi Spergel Inc.