

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

THE HONOURABLE
MADAM JUSTICE CONWAY

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TUESDAY, THE 25th
DAY OF AUGUST, 2020

B E T W E E N:



BANK OF MONTREAL

Applicant

- and -

2508342 ONTARIO INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by msi Spergel inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of 2508342 Ontario Inc. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and 2769127 Ontario Inc. (the "**Purchaser**") dated July 31, 2020 and appended to the first report of the Receiver dated August 18, 2020 (the "**First Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day via videoconference pursuant to the Court's Practice Direction pertaining to the COVID-19 pandemic.

ON READING the First Report and on hearing the submissions of counsel for the Receiver and counsel for the Applicant, no one else appearing for any other person on the service

list, although properly served as appears from the affidavit of Mariela Adriana Gasparini sworn August 19, 2020, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

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 Wilton-Siegel dated November 28, 2018; (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 Hastings (No. 21) of an Application for Vesting Order in the form

prescribed by the *Land Titles Act* and/or the *Land Registration Reform 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, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. **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.

9. **THIS COURT ORDERS** that Confidential Appendices "A" "B" "C" "D" and "F" to the First Report be and is hereby sealed, until the closing of the Transaction.

10. **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.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 02 2020

PER / PAR: 

Schedule A – Form of Receiver's Certificate

Court File No. CV-18-607905-00CL

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2508342 ONTARIO INC.

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Wilton-Siegel of the Ontario Superior Court of Justice (the "**Court**") dated November 28, 2018, msi Spergel inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of 2508342 Ontario Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated August 25, 2020, the Court approved the agreement of purchase and sale made as of July 31, 2020 (the "**Sale Agreement**") between the Receiver and 2769127 Ontario 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 undertaking, property and assets of
2508342 Ontario Inc., and not in its personal
capacity**

Per: _____

Name:

Title:

BANK OF MONTREAL

Applicant

-and- **2508342 ONTARIO INC.**

Respondent

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

**PROCEEDING COMMENCED AT
TORONTO**

RECEIVER'S CERTIFICATE

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Lawyers for msi Spengel inc., in its capacity as Court-appointed
Receiver of 2508342 Ontario Inc.

Schedule B – Purchased Assets

All of the Debtor's right, title and interest in and to all of the Debtor's property and assets, whether real or personal, tangible or intangible, of every kind and description and wherever situate, including, without limitation:

1. The lands municipally known as 57 Matthew Street, Marmora, Ontario and legally described as PT LT LOUCKS ESTATE BLK W PL 307 PT 1 21R8201 & PT 3 21R1295; S/T & T/W QR642264; S/T QR234933, QR234936; MARMORA & LAKE; COUNTY OF HASTINGS, being all of PIN 40170-0079 (LT) (the "**Lands**").
2. All inventories of or relating to or associated with the convenience store situated on the Lands and the restaurant situated on the Lands, excluding any fuel inventory which is the property of Parkland Fuel Corporation.

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

1. Instrument No. HT156425, being a Notice of Assignment of Lease – Specific in favour of Bank of Montreal;
2. Instrument No. HT184833, being a Notice of Lease in favour of CST Canada Co. as Tenant;
3. Instrument No. HT190075, being a Transfer in favour of 2508342 Ontario Ltd.;
4. Instrument No. HT190082, being a Charge in favour of Bank of Montreal;
5. Instrument No. HT190083, being a Notice of Assignment of Rents - General in favour of Bank of Montreal;
6. Instrument No. HT190084, being a Postponement of Interest in favour of Bank of Montreal;
7. Instrument No. HT190085, being a Postponement of Interest in favour of Bank of Montreal;
8. Instrument No. HT190086, being a Postponement of Interest in favour of Bank of Montreal;
9. Instrument No. HT217799, being an Application to Change Name-Instrument in which CST Canada Co. gave notice of its change of name to Couche-Tard Inc.;
10. Instrument No. HT217993, being a Notice of Assignment of Lessee Interest in Lease from Couche-Tard Inc. in favour of Parkland Fuel Corporation, in respect of the Lease registered as Instrument No. HT184833; and
11. Instrument No. HT238994, being an Application re Court Order appointing the Receiver.

12.

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

(unaffected by the Vesting Order)

1. Instrument No. QR197269, being a Notice of Option to Purchase;
2. Instrument No. QR234933, being a Transfer of Easement in favour of Her Majesty, the Queen in Right of Ontario as represented by the Minister of the Environment;
3. Instrument No. QR234936, being a Transfer of Easement in favour of Her Majesty, the Queen in Right of Ontario as represented by the Minister of the Environment;
4. Instrument No. QR662239, being a Notice of Lease from 1587375 Ontario Ltd. in favour of Ultramar Ltd.;
5. Instrument No. HT65406, being a Minister's Transfer Order Easement;
6. Instrument No. HT84600, being a Notice of Lease between 2209847 Ontario Limited and Ultramar Ltd.;
7. Instrument No. HT138748, being a Notice of Assignment of Lessee's Interest in Lease between Ultramar Ltd. CST Canada Co.;
8. Instrument No. HT184833, being a Notice of Lease from 2414088 Ontario Inc. in favour of CST Canada Co.;
9. Instrument No. HT217799, being an application to Change Name; and
10. Instrument No. HT217993, being a Notice of Assignment of Lessee's interest in Lease between Couche-Tard Inc. and Parkland Fuel Corporation

BANK OF MONTREAL

-and-

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PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Receiver of 2508342 Ontario Inc.