

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

TUESDAY, THE 25th

MADAM JUSTICE CONWAY

)

DAY OF AUGUST, 2020

)

BETWEEN:



BANK OF MONTREAL

Applicant

- and -

2508342 ONTARIO INC.

Respondent

DISCHARGE ORDER

THIS MOTION, made by msi Spergel inc. ("**Spergel**") in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of 2508342 Ontario Inc. (the "**Debtor**"), was heard this day via videoconference pursuant to the Court's Practice Direction pertaining to the COVID-19 pandemic.

ON READING the Notice of Motion of the Receiver returnable August 25, 2020, the first report of the Receiver dated August 18, 2020 (the "**First Report**"), the Affidavit of Deborah Hornbostel sworn August 18, 2020 (the "**Hornbostel Affidavit**"), the Affidavit of Tyler Mondor McNaughton sworn August 18, 2020 (the "**McNaughton Affidavit**") and on hearing the submissions of counsel for the Receiver and counsel for the Applicant, no one appearing for any other person on the service list, although properly served, as appears from the affidavit of service of Mariela Adriana Gasparini sworn August 19, 2020, filed:

SERVICE

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.

CAPITALIZED TERMS

2. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings ascribed thereto in the First Report.

APPROVAL OF ACTIVITIES AND FIRST REPORT

3. **THIS COURT ORDERS** that the First Report of the Receiver and the activities of the Receiver, as described in the First Report, be and are hereby approved; provided, however that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF STATEMENT OF RECEIPTS AND DISBURSEMENTS

4. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements as at July 31, 2020 be and is hereby approved.

DISTRIBUTIONS

5. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to make a distribution to Canada Revenue Agency, as set out in the First Report.

6. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to make distributions to Bank of Montreal ("BMO") up to the amount of the secured obligations owing to BMO, subject to the Receiver obtaining a copy of the issued Bankruptcy Order adjudging the Debtor a bankrupt.

APPROVAL OF FEES

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, as described in the First Report and as set out in the Hornbostel Affidavit, including the estimated fees and disbursements of the Receiver up to its date of discharge, be and are hereby approved.

8. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Borden Ladner Gervais LLP ("BLG"), as described in the First Report and as set out in the McNaughton Affidavit, including the estimated fees and disbursements of BLG in connection with services to be provided to the Receiver up to its date of discharge, be and are hereby approved.

DISCHARGE OF THE COURT-ORDERED CHARGES

9. **THIS COURT ORDERS** that the Receiver's Borrowings Charge, as defined in and created by the Order of Justice Wilton-Siegel dated November 28, 2018, be and is hereby fully and finally terminated, discharged and released.

10. **THIS COURT ORDERS** that the Receiver's Charge, as defined in and created by the Order of Justice Wilton-Siegel dated November 28, 2018, be and is hereby fully and finally terminated, discharged and released upon the Receiver filing a certificate with the Court in substantially the form attached hereto as Schedule "A" (the "**Discharge Certificate**").

DISCHARGE OF RECEIVER

11. **THIS COURT ORDERS** that upon the Receiver filing the Discharge Certificate with the Court certifying that it has completed the Remaining Duties, as defined and described in the First Report, the Receiver shall be discharged as Receiver of the undertakings, property 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 Spergel in its capacity as Receiver.

12. **THIS COURT ORDERS AND DECLARES** that Spergel is hereby released and discharged 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 while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Spergel is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or willful misconduct on Receiver's part.

AID AND RECOGNITION

13. **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 assist the Receiver, and its respective 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, and may as necessary or desirable to give effect to this Order or to assist the Receiver, and its respective agents, in carrying out the terms of this Order.

14. **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.



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

SEP 02 2020

PER / PAR: 

SCHEDULE "A": FORM OF RECEIVER'S DISCHARGE CERTIFICATE

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

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

B E T W E E N:

BANK OF MONTREAL

Applicant

– and –

2508342 ONTARIO INC.

Respondent

RECEIVER'S DISCHARGE CERTIFICATE

- A. Pursuant to an Order of Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 28, 2018, msi Spergel inc. was appointed receiver (the "**Receiver**") of 2508342 Ontario Inc. (the "**Debtor**") pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
- B. Pursuant to an Order of the Court dated August 25, 2020 (the "**Discharge Order**") the Court ordered, *inter alia*, that the Receiver be discharged, effective upon the filing by the Receiver of a certificate certifying the matters set out herein.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER HEREBY CERTIFIES the following:

- 1. The Receiver is satisfied, in its discretion, that it has completed its remaining duties, as set out in the Receiver's First Report to the Court dated August ●, 2020.
- 2. This Certificate was delivered by the Receiver at _____ (time) on _____ (date).

[Signature Page Follows]

MSI SPERGEL INC., in its capacity as court-
appointed receiver of 2508342 ONTARIO INC.

Per:

Name:

Title:

BANK OF MONTREAL

-and- **2508342 ONTARIO INC.**

Applicant

Respondent

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

**PROCEEDING COMMENCED AT
TORONTO**

RECEIVER'S DISCHARGE CERTIFICATE

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

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Receiver of 2508342 Ontario Inc.