

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 27th DAY
JUSTICE A.J. GOODMAN)
OF APRIL, 2023

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

2580363 ONTARIO INC. AND 2580361 ONTARIO INC.

Respondents

DISCHARGE 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 2580363 Ontario Inc. ("**363**") and 2580361 Ontario Inc. ("**361**") (together, the "**Debtors**") pursuant to the Orders of the Honourable Justice MacNeil each dated June 2, 2022 and the Honourable Justice Parayeski dated October 4, 2022, of the Ontario Superior Court of Justice (collectively, the "**Receivership Order**"), for an order, among other relief:

1. approving the actions and activities of the Receiver as set out in the report of the Receiver dated April 12, 2023 (the "**First Report**");
2. approving the fees and disbursements of the Receiver and its counsel;

3. approving the statement of receipts and disbursements of the Receiver;
4. approving the payment and distribution of the remaining net proceeds available in the estate of the Debtors;
5. approving the sealing of the Confidential Appendices to the First Report;
6. approving the Fee Accrual;
7. declaring the Funds to be "Property" under the Receivership Order;
8. discharging msi Spergel inc. as Receiver of the undertaking, property and assets of the Debtors; and
9. releasing msi Spergel inc. from any and all liability as set out below in this Order,

was heard this day by videoconference via Zoom in Hamilton, Ontario due to the COVID-19 pandemic.

ON READING the First Report, and the affidavits on behalf of the Receiver and its counsel as to fees and disbursements, included in the First Report (the "**Fee Affidavits**"), and on hearing the submissions of counsel for the Receiver, and those parties listed on the Counsel Slip or Participant Information Form, no one else appearing although duly served with the Receiver's Motion Record and First Report, as appears from the affidavit of service of Michelle Pham sworn April 17, 2023, filed:

Service and Definitions

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

2. THIS COURT ORDERS that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the First Report.

Receiver's Actions and Activities

3. THIS COURT ORDERS that the First Report and the actions and activities of the Receiver as described in the First Report, including in respect of the real property owned by 361 and municipally known as 21 Augusta Street, Hamilton, Ontario and legally described as PIN 17170-0018 (LT) (the "**Real Property**") and the Receiver's borrowing from The Toronto-Dominion Bank ("**TD**") in the principal amount of \$65,000 giving rise to the Receiver's Borrowings Charge, are hereby approved.

4. THIS COURT ORDERS that the receipts and disbursements of the Receiver, as set out in the First Report, are hereby approved.

Professional Costs

5. THIS COURT ORDERS that the fees and disbursements of the Receiver in the amount of \$85,836.11 including HST for the period from September 1, 2022 to March 31, 2023 (the "**Receiver's Costs**"), as set out in the First Report, are hereby approved.

6. THIS COURT ORDERS that the fees and disbursements of the Receiver's legal counsel, Fogler, Rubinoff LLP, in the total amount of \$39,648.70 including HST for the period from

April 7, 2022 to March 23, 2023 ("**Fogler's Costs**"), as set out in the First Report, are hereby approved.

Fee Accrual

7. THIS COURT ORDERS that the Receiver shall reserve or holdback funds from the sale proceeds realized on the completion of the Transaction, for the Receiver in the amount of \$30,000 plus HST and disbursements and for Receiver's counsel, Fogler, Rubinoff LLP, in the amount of \$25,000 plus HST and disbursements (the aggregate amount being, the "**Fee Accrual**") for the estimated professional fees and disbursements of the Receiver and its counsel to complete the Transaction, any post-closing matters and the administration of the receivership to the discharge of the Receiver, as described in the First Report.

Sealing Confidential Documents

8. THIS COURT ORDERS the sealing of the Confidential Appendices in the First Report, until completion of the Transaction or further Order of this Court.

The Funds

9. THIS COURT ORDERS AND DECLARES that the Funds defined or described in the First Report in the approximate amount of \$254,000 (the "**Funds**") constitute and are "Property" under the Receivership Order.

Distribution

10. THIS COURT ORDERS that after the completion of the sale Transaction of the Real Property, the payment of the Receiver's Costs, Fogler's Costs, the amount borrowed by the Receiver from TD as secured by the Receiver's Borrowings Charge, any amounts that constitute

priority payables or deemed trusts, and any property tax arrears in respect of the Real Property, and the retention of the Fee Accrual, the Receiver shall pay the net proceeds to TD, as first mortgagee of the Real Property.

Discharge

11. THIS COURT ORDERS that upon the Receiver filing a certificate of completion with this Court certifying that it has completed the activities described in the First Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtors, 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 msi Spergel inc. in its capacity as Receiver.

12. THIS COURT ORDERS AND DECLARES that upon the Receiver filing a certificate of completion with this Court certifying that it has completed the activities described in the First Report, msi Spergel inc. is hereby released and discharged from any and all liability that msi Spergel inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of msi Spergel inc. while acting in its capacity as Receiver herein up to and including the discharge date as described in any of its reports to the Court, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, msi Spergel inc. 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 wilful misconduct on the Receiver's part.

13. THIS COURT ORDERS that this Order is effective from the date on which it is made, and is enforceable without any need for entry and filing.

A handwritten signature in blue ink, consisting of stylized initials followed by a horizontal line.

THE TORONTO-DOMINION BANK

Applicant

-and- **2580363 ONTARIO INC. and 2580361 ONTARIO INC.**

Respondents

Court File No. CV-22-0078521-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
HAMILTON

DISCHARGE ORDER

FOGLER, RUBINOFF LLP

Lawyers

77 King Street West

Suite 3000, P.O. Box 95

TD Centre North Tower

Toronto, ON M5K 1G8

Vern W. DaRe (LSO# 32591E)

vdare@foglers.com

Tel: 416.941.8842

Fax: 416.941.8852

Lawyers for msi Spergel inc.,
the Receiver