

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

THE HONOURABLE MR.) WEDNESDAY, THE 15TH
JUSTICE CAVANAGH) DAY OF DECEMBER, 2021

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

1725859 ONTARIO INC., 1941275 ONTARIO LTD., AND 1941276 ONTARIO INC.

Respondents

**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**

DISCHARGE ORDER

THIS MOTION, made by msi Spergel inc. (“**Spergel**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of 1725859 Ontario Inc., 1941275 Ontario Ltd. and 1941276 Ontario Inc. (collectively, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including, without limitation, the Real Property (as defined in the Order of The Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) made on November 1, 2021), for an order, amongst other things: (i) approving the First Report of the Receiver dated December 10, 2021 (the “**First Report**”) and the activities of the Receiver set

out therein; (ii) approving the fees and disbursements of the Receiver and its counsel, Aird & Berlis LLP, that are set out in the fee affidavits appended to the First Report; (iii) approving the Fee Accrual (as defined in the First Report); (iv) discharging Spergel as the Receiver effective upon the filing of a certificate by the Receiver certifying that all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver (including, without limitation: (1) repayment by the Debtors of all monies known to the Receiver to be owing to the Applicant; (2) payment by the Debtors to the Receiver of all amounts secured by the Receiver's Charge and the Receiver's Borrowings Charge (as both terms are defined in the Appointment Order); (3) payment by the Debtors of all outstanding realty taxes known to the Receiver in respect of the Real Property; and (4) payment by the Debtors of any amounts known to the Receiver as owing to Canada Revenue Agency), in substantially the form attached hereto as Schedule "A" (the "**Discharge Certificate**"); and (v) releasing Spergel from any and all liability, as set out in paragraph 6 of this Order, was heard this day via videoconference because of the COVID-19 emergency.

ON READING the First Report, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of Eunice Baltkois sworn December 10, 2021,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the 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** that the First Report, and the activities of the Receiver set out therein (including, without limitation, the Receiver's statement of receipts and disbursements), be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, Aird & Berlis LLP, as set out in the fee affidavits appended to the First Report, be and are hereby approved.
4. **THIS COURT ORDERS** that the Fee Accrual be and is hereby approved.

5. **THIS COURT ORDERS** that upon the Receiver filing the Discharge Certificate, the Receiver shall be discharged as Receiver 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 Spergel in its capacity as the Receiver.

6. **THIS COURT ORDERS AND DECLARES** that, upon the Receiver filing the Discharge Certificate, 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 the Receiver herein, save and except for any gross negligence or wilful 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 wilful misconduct on the Receiver's part.

7. **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.

8. **THIS COURT ORDERS** that, notwithstanding Rule 59.05 of the *Rules of Civil Procedure* (Ontario) (the "**Rules**"), this Order is effective from the date on which it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04 of the Rules, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

SCHEDULE “A”

Court File No. CV-21-00668237-00CL

**ONTARIO
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- and -

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RECEIVER’S DISCHARGE CERTIFICATE

RECITALS

(A) Pursuant to an Order of The Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on November 1, 2021 (the “**Appointment Order**”), msi Spergel inc. (“**Spergel**”) was appointed as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of 1725859 Ontario Inc., 1941275 Ontario Ltd. and 1941276 Ontario Inc. (collectively, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including, without limitation, the Real Property (as defined in the Appointment Order).

(B) Pursuant to an Order of the Court made on December 15, 2021 (the “**Discharge Order**”), Spergel was discharged as the Receiver of the Debtors to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver (including, without limitation: (1) repayment by the Debtors of all monies known to the Receiver to be owing to the Applicant; (2) payment by the Debtors to the Receiver of all amounts secured by the Receiver’s Charge and the Receiver’s Borrowings Charge (as both terms are defined in the Appointment Order); (3) payment by the Debtors of all outstanding realty taxes known to the Receiver in respect of the Real Property; and (4) payment by the Debtors of any amounts known to the Receiver as owing to Canada Revenue Agency), provided, however, that notwithstanding its discharge: (a) the Receiver will remain the Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and (b) the Receiver will 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 the Receiver.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER CERTIFIES the following:

1. all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver; and
2. this Discharge Certificate was filed by the Receiver with the Court on the _____ day of _____, 2021.

MSI SPERGEL INC., solely in its capacity as the Court-appointed Receiver, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

-and-

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(COMMERCIAL LIST)

Proceedings commenced at Toronto

DISCHARGE ORDER

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