

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 28TH
)
JUSTICE PENNY) DAY OF SEPTEMBER, 2021
)

B E T W E E N:



THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

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

DISCHARGE ORDER
(returnable September 28, 2021)

THIS MOTION, made by msi Spergel inc. ("**Spergel**") in its capacity as the Court-appointed receiver and manager (in such capacities, the "**Receiver**") of the undertaking, property and assets of Orbit Freight Ltd. (the "**Debtor**"), for an order:

1. approving the third report of the Receiver dated September 21, 2021 (the "**Third Report**") and the activities of the Receiver set out therein;
2. authorizing Spergel to make an assignment in bankruptcy on behalf of the Debtor;
3. approving the fees and disbursements of the Receiver and those of its legal counsel, Aird & Berlis LLP for the period of April 1, 2021 to and including September 20, 2021 ("**A&B**"),

including an accrual for fees and disbursements to be incurred to the completion of these proceedings;

4. authorizing and directing the Receiver to distribute certain funds to the Toronto-Dominion Bank (“TD”) on account of the Debtor’s secured indebtedness owing to TD for principal, interest and costs;

5. approving the Receiver’s Interim Statement of Receipts and Disbursements as at September 20, 2021 (as appended to the Third Report);

6. discharging Spergel as Receiver of the undertaking, property and assets of the Debtor, 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 Debtor have been completed to the satisfaction of the Receiver, in substantially the form attached hereto as **Schedule “A”** (the “**Discharge Certificate**”); and

7. releasing Spergel from any and all liability, as set out in paragraph 9 of this Order,

was heard this day by judicial videoconference.

ON READING the Motion Record of the Receiver, including the Third Report and the appendices thereto, the affidavits of the Receiver and its counsel as to fees (the "**Fee Affidavits**"), and on hearing the submissions of counsel for the Receiver and such other counsel as were present and listed on the Counsel Slip, no one else appearing although served as evidenced by the Affidavit of Miranda Spence sworn September 22, 2021, filed.

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of this Motion and the Motion Record herein is abridged such that the Motion is properly returnable today, and hereby dispenses with further service thereof.

APPROVAL OF THE FINAL REPORT

2. **THIS COURT ORDERS** that the Third Report and the conduct and activities of the Receiver described therein be and are hereby approved.

APPROVAL OF RECEIPTS AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements as set out in Appendix 10 to the Third Report and as at September 20, 2021, be and is hereby approved.

ASSIGNMENT IN BANKRUPTCY

4. **THIS COURT ORDERS** that the Receiver be, and is hereby, authorized to make an assignment in bankruptcy on behalf of the Debtor.

APPROVAL OF FEES AND DISBURSEMENTS

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period April 1, 2021 to and including August 31, 2021, being \$14,354.81 inclusive of disbursements and HST, as set out in Appendix "9" to the Third Report, are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, A&B, for the period April 1, 2021 to and including June 29, 2021, being \$16,493.23 inclusive of disbursements and HST, as set out in Appendix "10" to the Third Report, are hereby approved.

7. **THIS COURT ORDERS** that the Fee Accrual of \$22,500, exclusive of disbursements and HST (as defined in the Third Report), representing the Receiver's and its legal counsel's fees to the completion of these proceedings, is hereby approved.

APPROVAL OF DISTRIBUTION

8. **THIS COURT ORDERS** that, after payment of the fees and disbursements set out in paragraphs 5 and 6 above and herein approved, the Receiver is hereby authorized and directed to make the proposed distribution to TD (the "**TD Distribution**") with the monies remaining in its hands to TD on account of the Debtor's secured indebtedness owing to TD, as outlined in the Third Report, for principal, interest and costs, after provision for any amounts that are required to be paid to any other party in priority to TD, if any, under the *Bankruptcy and Insolvency Act* (Canada).

DISCHARGE AND RELEASE

9. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraph 6 above and the filing of the Discharge Certificate by the Receiver in the form attached hereto as **Schedule "A"**, Spergel shall be discharged as Receiver of the assets, undertakings and properties of the Debtor, provided however that notwithstanding its discharge herein (a) Spergel shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of its mandate, 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.

10. **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 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 and all liability relating to matters that were raised, or which could have been raised, in the within proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

11. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or 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, as the case may be, when the Court returns to regular operations.



SCHEDULE “A”

Court File No. CV-21-00658361-00CL

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

THE TORONTO-DOMINION BANK

Applicant

- and -

ORBIT FREIGHT LTD.

Respondent

RECEIVER’S DISCHARGE CERTIFICATE

RECITALS

(A) Pursuant to an Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made March 11, 2021 (the “**Appointment Order**”), msi Spergel Inc. (“**Spergel**”) was appointed as receiver (in such capacity, the “**Receiver**”), of all the assets, undertakings and properties of Orbit Freight Ltd. (the “**Debtor**”).

(B) Pursuant to an Order of the Court made September 28, 2021 (the “**Distribution and Discharge Order**”), Spergel was discharged as the Receiver of the Debtor 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 Debtor have been completed to the satisfaction of the Receiver, 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 these receivership proceedings; and (b) the Receiver will continue to have the

benefit of the provisions of all Orders made in these proceedings, 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 Distribution and Discharge Order.

THE RECEIVER CERTIFIES the following:

1. all matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver; and
2. this Certificate was filed by the Receiver with the Court on the _____ day of _____, 2020.

msi Spergel Inc., solely in its capacity as the Court-appointed receiver of the Respondent, and not in its personal capacity

Per:

Name:

Title:

THE TORONTO-DOMINION BANK

- and - **ORBIT FREIGHT LTD.**

Applicant

Respondent

Court File No. CV-21-00658361-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

DISCHARGE ORDER

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Lawyers for the Receiver