



Court File No. CV-22-00678808-00CL

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

THE HONOURABLE) TUESDAY, THE 3rd
JUSTICE CAVANAGH)
DAY OF OCTOBER, 2023

B E T W E E N:

CANADIAN EQUIPMENT FINANCE AND LEASING INC.

Applicant

- and -

**THE HYPOINT COMPANY LIMITED, 2618905 ONTARIO LIMITED, 2618909
ONTARIO LIMITED, BEVERLEY ROCKLIFFE, and CHANTAL BOCK**

Respondents

**ORDER
(Re Interim Distribution and Discharge)**

THIS MOTION made by **msi SPERGEL INC.**, (“**MSI**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) without security, of the undertaking, property and assets of the Hypoint Company Limited and 2618909 Ontario Limited (collectively, the “**Debtors**”), for the relief set out in the Notice of Motion dated September 26, 2023, was heard by judicial videoconference.

ON READING the Motion Record of the Receiver, and the Second Report of the Receiver dated September 26, 2023 (the “**Second Report**”), the Affidavit of Philip Gennis sworn September 21, 2023 (the “**msi Fee Affidavit**”), the Affidavit of Shaun Parsons sworn September 25, 2023 (the “**RECON Fee Affidavit**”), and on hearing the submissions of counsel for the Receiver and any such other party as was present, no

one appearing for any other person on the service list, although properly served as evidenced by the affidavit of Shaun Parsons sworn September 27, 2023, filed.

SERVICE

1. **THIS COURT ORDERS** that the time and method 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 hereof.

APPROVAL OF ACTIVITIES

2. **THIS COURT ORDERS** that the Second Report and the actions and activities of the Receiver and the Statement of Receipts and Disbursements of the Receiver as described in the Second Report 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 FEES

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and Reconstruct LLP, as set out in the Second Report, the msi Fee Affidavit, and the RECON Fee Affidavit are hereby approved.

INTERIM DISTRIBUTION

4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make distributions (collectively, the “**Interim Distribution**”) in payment of the following, subject to paragraph 5 below:

- (a) Amounts owing to Canada Revenue Agency in satisfaction of its Deemed Trust Priority Claim for unpaid source deductions regarding The Hypoint Company Limited;
- (b) Amounts owing to Richard Goldberg in the amount of \$245,000, together with interest thereon from the date of advance to the date of payment, in satisfaction of the Receiver’s Borrowings Charge;

- (c) Amounts owing to Bruce Lubelsky as first mortgagee in the amount of \$1,300,000.00 plus interest thereon and associated legal fees; and
- (d) Amounts owing to Delrin Investments Inc., Samuel Stern, Harvey Kessler, and Richard Goldberg in the amount of \$2,750,347.29.

5. **THIS COURT ORDERS** that the Interim Distribution shall not constitute a “distribution” for the purposes of section 107 of the *Corporations Tax Act* (Ontario), section 22 of the *Retail Sales Tax Act* (Ontario), section 117 of the *Taxation Act, 2007* (Ontario), section 159 of the *Income Tax Act*, section 270 of the *Excise Tax Act* (Canada), section 86 of the *Employment Insurance Act (Canada)*, or any other similar applicable federal, provincial or territorial tax legislation (collectively, the “**Tax Statutes**”), the Receiver is hereby empowered to, after sixty days of this Order, make the Interim Distribution without a tax clearance certificate or comfort letter from the Canada Revenue Agency (“**Tax Clearance Certificate**”). The Receiver shall not be liable in its personal or corporate capacity for making a distribution prior to receiving a Tax Clearance Certificate and the Receiver, in making the Interim Distribution, is merely a disbursing agent and is not exercising any discretion in making the Interim Distribution, and no person is “distributing” such funds for the purpose of the Tax Statutes, and the Receiver shall not incur any liability under the Tax Statutes in respect of the Interim Distribution and the Receiver is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect or as a result of the Interim Distribution made by it in accordance with this Order and any claims of this nature are hereby forever barred.

DISCHARGE

6. **THIS COURT ORDERS** that, effective upon the filing of the Receiver of a certificate (the “**Discharge Certificate**”) in the form attached hereto as Schedule “A”, confirming the completion of the terms and conditions of its discharge have been met, as set out in the Second Report, the Receiver shall be discharged as receiver of all property, assets and undertakings of the Company, 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 stay of proceedings in favour of MSI in its capacity as Receiver.

7. **THIS COURT ORDERS** that, prior to the filing of the Discharge Certificate, the Receiver is hereby authorized and directed, but not required, to file an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* for and on behalf of the Hypoint Company Limited and to take any such steps incidental thereto.

8. **THIS COURT ORDERS AND DECLARES** that MSI is hereby released and discharged from any and all liability that MSI now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of MSI 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, MSI 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.

GENERAL

8. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

9. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

A digital signature in blue ink, appearing to read 'Cavanagh', is enclosed in a light grey rectangular box with a thin red border.

Digitally signed by
Mr. Justice Cavanagh

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-21-00661434-00CL

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

B E T W E E N:

CANADIAN EQUIPMENT FINANCE AND LEASING INC.

Applicant

- and -

**THE HYPOINT COMPANY LIMITED, 2618905 ONTARIO LIMITED, 2618909
ONTARIO LIMITED, BEVERLEY ROCKLIFFE, and CHANTAL BOCK**

Respondents

RECEIVER’S DISCHARGE CERTIFICATE

RECITALS

A Pursuant to an Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (the “**Court**”) dated October 28, 2022, msi Spergel inc. was appointed as the receiver and receiver and manager (the “**Receiver**”) of the undertaking, property and assets of the Hypoint Company Limited and 2618909 Ontario Limited (collectively, the “**Debtors**”).

B Pursuant to an Order of the Court dated October 3, 2023, the Court approved the discharge of the Receiver to become effective upon the filing by the Receiver of a certificate certifying that all outstanding matters in respect of the receivership proceeding have been completed.

THE RECEIVER CERTIFIES the following:

1. All outstanding matters in respect of the receivership proceeding, including but not limited to those set out in the Second Report of the Receiver dated September 26, 2023, have been completed; and
2. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

msi Spergel Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per:

Name:

Title:

**CANADIAN EQUIPMENT FINANCE AND
LEASING INC.**

and

THE HYPOINT COMPANY LIMITED et al.

Applicants

Respondents

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

ORDER
(Distribution and Discharge)

RECONSTRUCT LLP
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2305, P.O. Box 120
Toronto, ON M5J 2J3

Caitlin Fell LSO No. 60091H
cfell@reconllp.com
Tel: 416.613.8282

Shaun Parsons LSO No. 81240A
sparsons@reconllp.com
Tel: 416.613.8284

Fax: 416.613.8290

**Lawyers for the Receiver, msi Spergel,
in its capacity as the court appointed
Receiver of The Hypoint Company
Limited and 2618909 Ontario Limited.**