

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM)	MONDAY, THE 3RD
)	
JUSTICE CONWAY)	DAY OF JUNE, 2019

BETWEEN:



ROYAL BANK OF CANADA

Applicant

and

**TORONTO MACHINE & TOOL COMPANY LIMITED,
TORONTO MACHINE & TOOL INC.**

Respondents

DISTRIBUTION AND 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 Toronto Machine & Tool Company Limited ("**TMT Limited**") and Toronto Machine & Tool Inc. ("**TMT Inc.**") (collectively the "**Debtors**"), for an order, among other things: (i) approving the activities of the Receiver as set out in the Second Report of the Receiver dated May 23, 2019 (the "**Second Report**"); (ii) approving the fees and disbursements of the Receiver and its counsel, including an accrual for fees and disbursements to be incurred to the completion of these proceedings; (iii) authorizing and directing the Receiver to distribute monies from the Debtors' estate; (iv) discharging msi Spergel inc. as Receiver of the assets, undertakings and properties of the Debtors effective upon filing of a certificate

by the Receiver certifying that all matters to be attended to in connection with the receivership of the Debtors has been completed to the satisfaction of the Receiver, in substantially the form attached hereto as Schedule "A" (the "**Discharge Certificate**"); and (v) releasing msi Spergel inc. from any and all liability, as set out in paragraph 7 of this Order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report, the fee affidavits of Mukul Manchanda sworn May 23, 2019 for the Receiver and the fee affidavits of Timothy Dunn sworn May 23, 2019 for Minden Gross LLP (collectively the "**Fee Affidavits**"), and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Pauline Leitgeb sworn May 24, 2019, filed:

1. **THIS COURT ORDERS** that the time for service and filing 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 Second Report and the actions of the Receiver described therein be and are hereby approved, including without limitation, the Receiver's Interim Statement of Receipts and Disbursements appended thereto.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as described in the Second Report and as set out in the Fee Affidavits, be and are hereby approved.
4. **THIS COURT ORDERS** that the Fee Accrual (as defined in the Second Report and in Fee Affidavits) be and is hereby approved.
5. **THIS COURT ORDERS** that, after payment of the fees and disbursements approved by paragraphs 3 and 4 of this Order, the Receiver be and is hereby authorized and directed, without further Order of this Court, to distribute the monies remaining in the Receiver's hands, as follows:

TMT Inc.

- (a) \$384,350.15 to the Receiver General;
- (b) \$50,788.60 to the Receiver General;
- (c) balance, excluding the proceeds related to the CFG Leased Assets (as defined in the Second Report), to Royal Bank of Canada ("**RBC**"); and
- (d) the proceeds related to the CFG Leased Assets (the "**CFG Funds**") to RBC and/or Anthony Gazzaruso and Josephine Gazzaruso (Anthony Gazzaruso and Josephine Gazzaruso are collectively, "**Gazzaruso**"), in accordance with a written agreement signed by RBC and Gazzaruso or pursuant to a Court Order.

TMT Limited

- (e) \$30,000.00 to Royal Bank of Canada; and
- (f) balance of funds to Royal Bank of Canada.

6. **THIS COURT ORDERS** that upon the Receiver filing the Discharge Certificate, 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.

7. **THIS COURT ORDERS AND DECLARES** that, upon the Receiver filing the Discharge Certificate, 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, 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.



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JUN 03 2019

PER / PAR: 

SCHEDULE "A"

Court File No. CV-17-587642-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

**TORONTO MACHINE & TOOL COMPANY LIMITED,
TORONTO MACHINE & TOOL INC.**

Respondents

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

(A) Pursuant to an Order of the Honourable Mr. Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on February 27, 2018), msi Spergel Inc. ("**Spergel**") was appointed as receiver (in such capacity, the "Receiver"), without security, of all of the assets, undertakings and properties of Toronto Machine & Tool Company Limited and Toronto Machine & Tool Inc. (collectively the "**Debtors**").

(B) Pursuant to an Order of the Court made on June 3, 2019 (the "**Discharge Order**"), Spergel was discharged as the Receiver of all the assets, undertakings and properties 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 has 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, such as holding the CFG Funds in accordance with subparagraph 5(c) of the Discharge Order, 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 Certificate was filed by the Receiver with the Court on the _____ day of _____, 2019.

MSI SPERGEL INC., solely in its capacity as the Court-appointed receiver of all the assets, undertakings and properties of Toronto Machine & Tool Company Limited and Toronto Machine & Tool Inc., and not in its personal capacity

Per: _____

Name:

Title:

BETWEEN

ROYAL BANK OF CANADA
Applicant

-and-

TORONTO MACHINE & TOOL COMPANY LIMITED, et al
Respondents
Court File No. CV-17-587642-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

DISTRIBUTION AND DISCHARGE ORDER

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(File No. 4109084)