

Court File No. CV-24-00086229-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

SMART SUPER MART LTD.

Respondent

RECEIVER'S FACTUM

**(Receiver's Motion for Approval and Vesting Order
and Approval, Distribution and Discharge Order)**

December 22, 2025

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PART I – OVERVIEW

1. This is a motion brought by msi Spergel Inc. (“**Spergel**”) in its capacity as court-appointed receiver (the “**Receiver**”) of the Debtor, Smart Super Mart Ltd. (the “**Debtor**”).
2. The Receiver seeks the following relief on this motion:
 - (a) approving the First Report to the Court of the Receiver dated December 19, 2025 (the “**First Report**”), and the activities and conduct of the Receiver set out in the First Report 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 the approval of the First Report;
 - (b) approving the Receiver’s Interim Statement of Receipts and Disbursements as at November 30, 2025;
 - (c) approving an agreement of purchase and sale between the Receiver, as Vendor, and Shakeel Ahmed (In Trust for a corporation to be formed) dated October 21, 2025 as amended December 11, 2025 to change the name of the purchaser to Ahmed Petroleum Services Inc. (“**Ahmed**” or the “**Purchaser**”) and authorizing the Receiver to complete the transaction contemplated thereby (the “**Transaction**”);
 - (d) vesting in the Purchaser all of Smart Super Mart Ltd.’s right, title and interest in and to the Purchased Assets (as defined in the Ahmed Agreement of Purchase and Sale “**Ahmed APS**”) free and clear of any claims and encumbrances (other than the permitted encumbrances identified in the Ahmed APS);

- (e) sealing the Confidential Appendices to the First Report until the completion of the Transaction, or until a further order of this Court;
- (f) approving the Receiver's request to disclaim the Fuel Supply Agreement entered into between the Debtor and McDougall Energy Inc. dated June 21, 2020 (the "**McDougall Agreement**");
- (g) approving the fees and disbursements of the Receiver and its counsel, Gowling WLG (Canada) LLP, and authorizing payment of such fees and disbursements;
- (h) approving the Fee Accrual (as defined below);
- (i) approving the Proposed Distribution (as defined below); and
- (j) that effective upon filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, Spergel is discharged as Receiver and granting certain ancillary relief in relation to such discharge.

PART II - FACTS

3. The Debtor is the owner of real property known as 179-185 St. Paul Street West, St. Catharines, Ontario, and legally described as PART LOTS 1852-1854 CP PL 2 GRANTHAM, DESIGNATED AS PART 2 30R15372; CITY OF ST. CATHARINES bearing PIN 46179-0340 (LT) (the "**Real Property**"), which consists of a formerly operating gas bar, convenience store and self-serve car wash bays, none of which have

been operating for approximately one year¹.

4. On January 30, 2025, an order was obtained by the Royal Bank of Canada (“**RBC**” or the “**Bank**”), a secured creditor of the Debtor, by way of application brought in the Ontario Superior Court of Justice (the “**Court**”), appointing Spergel as Receiver of all assets, undertakings, and properties, including the Real Property (collectively, the “**Property**”,) of the Debtor (the “**Receivership Order**”)².

The First Report

5. The Receivership Order was provided to the Debtor, and the Receiver also prepared its statutory Notice and Statement of the Receiver in accordance with subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and mailed them to all creditors known to the Receiver³.

Sale of the Property

6. The Debtor’s sole asset is the Real Property⁴. The Receiver engaged Antec Appraisal Group Inc. (“**Antec**”) and Colliers International (“**Colliers**”) to prepare appraisals of the Property⁵.

7. The Receiver engaged Avison Young Commercial Real Estate Services LP, Brokerage (“**Avison**”) and CBRE Real Estate Brokerage (“**CBRE**”) to prepare sales and

¹Motion Record of the Receiver, msi Spergel, dated December 22, 2025 (the “**Receiver’s Motion Record**”), Tab 2, First Report of msi Spergel Inc. dated December 19, 2025 (the “**First Report**”), para. 3.

²Receiver’s Motion Record, Tab 2, First Report, paras. 4 and 5, Appendices 1 and 2.

³Receiver’s Motion Record, Tab 2, First Report, para. 11.

⁴Receiver’s Motion Record, Tab 2, First Report, para. 19.

⁵Receiver’s Motion Record, Tab 2, First Report, para. 21, Confidential Appendices 1 and 2.

marketing proposals⁶.

8. The Receiver entered into an MLS Listing Agreement with Avison due to its commission structure being commercially reasonable and its skill set of the brokerage would garner optimum recovery⁷.

9. The Property was widely marketed to obtain maximum interest resulting in a number of interested parties and three offers were received⁸.

10. The Receiver determined that the offer by the Purchaser was the best offer received in that the Ahmed APS is an “as-is, where-is” offer conditional upon the Purchaser being able to obtain an Approval and Vesting Order issued by the Court and the disclaimer of the McDougall Agreement⁹.

11. The Receiver is of the opinion that the sales process was one that resulted in the best price, considered the interests of all parties, was a fair and a public process, was conducted in a commercially reasonable manner, and that the market was extensively canvassed and that sufficient exposure of the Property was provided¹⁰.

12. The Receiver’s view is that the terms and conditions of the Purchaser’s offer are commercially reasonable, that the purchase price is at market value for the Property, and

⁶Receiver’s Motion Record, Tab 2, First Report, para. 21, Confidential Appendices 4 and 5.

⁷Receiver’s Motion Record, Tab 2, First Report, para. 22, Appendices 4 and 5.

⁸Receiver’s Motion Record, Tab 2, First Report, paras. 23 and 24, Confidential Appendix 5 and Confidential Appendix 6.

⁹Receiver’s Motion Record, Tab 2, First Report, paras. 26, Appendix 6 and Confidential Appendix 7.

¹⁰Receiver’s Motion Record, Tab 2, First Report, paras. 27 and 28.

is the best outcome in the circumstances¹¹.

13. The Bank has been consulted about the Transaction and supports the completion of it as well as the relief sought by the Receiver on this motion¹².

14. The Bank holds a first mortgage (the “**RBC Mortgage**”) over the Property with a principal balance of \$2,135,000.00 registered on title to the Property with an amount owing under the RBC Mortgage of \$1,767,509.33 as at June 17, 2024, with plus costs of enforcement, including legal and professional costs and accruing interest¹³.

15. There are two registrants under the *Personal Property Security Act* (“**PPSA**”) of the Debtor as at December 11, 2025¹⁴ including RBC followed by Nissan Canada.

16. The outstanding realty taxes on the Real Property amount to \$80,031.51 as at December 10, 2025, and if the Transaction is approved and completed, the outstanding realty taxes will be paid from the sale proceeds¹⁵.

The McDougall Agreement

17. The Debtor was purchasing its fuel from McDougall under the terms of the McDougall Agreement, which contains a Right of First Refusal (“**ROFR**”) in favour of McDougall¹⁶.

¹¹Receiver’s Motion Record, Tab 2, First Report, para. 29.

¹²Receiver’s Motion Record, Tab 2, First Report, para. 30.

¹³Receiver’s Motion Record, Tab 2, First Report, paras. 32 and 33.

¹⁴Receiver’s Motion Record, Tab 2, First Report, para. 34, Appendix 7.

¹⁵Receiver’s Motion Record, Tab 2, First Report, para. 35.

¹⁶Receiver’s Motion Record, Tab 2, First Report, para 14 and 15, Appendix 3.

18. As of the date of the First Report, the Receiver has not received a response from McDougall as to its intention relative to the ROFR nor in regard to the Receiver's disclaiming of the McDougall Agreement¹⁷.

19. The Receiver has been advised by the listing broker that the prospective Purchaser refused to assume the McDougall Agreement, intending to purchase fuel from other third-party providers.¹⁸

20. It is a requirement of the Transaction that the McDougall Agreement be disclaimed. The Ahmed APS represents the best offer in terms of price, considered the interest of all parties, was fair and a public process, and done in a commercially reasonable manner. In not pursuing the disclaimer of the McDougall Agreement, the Receiver risks termination of the Transaction. If the Transaction is terminated, then the deposit is returned to the Purchaser, and the Receiver must restart a further marketing and sales process for the Property resulting in further costs and delay. There is no assurance that the Receiver will obtain an offer similar in price to the Ahmed APS¹⁹.

Sealing Order

21. Certain of the appendices to the First Report including Confidential Appendices 1-7 contains commercially sensitive information whose release prior to the completion of the Transaction would be prejudicial to the stakeholder's of the Debtor's estate. The request for a sealing order is temporary and only until the earlier of the completion of the

¹⁷Receiver's Motion Record, Tab 2, First Report, para. 16.

¹⁸Receiver's Motion Record, Tab 2, First Report, para. 17.

¹⁹Receiver's Motion Record, Tab 2, First Report, para. 18, Appendix 6 and Confidential Appendix 7.

Transaction or further Order of this Court.²⁰

Professional Fees and Disbursements

22. The Receiver seeks its professional fees and disbursements respecting the completion of the Transaction, if approved, and completion of the administration of the estate should not exceed \$150,000 plus disbursements and HST. The Receiver seeks approval to hold back this sum pending completion of all matters and the Receiver's discharge (the "**Fee Accrual**")²¹.

Receiver's Interim Statement of Receipts and Disbursements

23. As of November 30, 2025, the Receiver's Interim Statement of Receipts and Disbursements totalled \$9,708.03²².

Receiver's Borrowing and Proposed Distribution

24. The Receiver borrowed \$70,000.00 from the Bank (the "**Receiver's Borrowing**") to fund its disbursements during the receivership.²³

25. As confirmed in paragraph 21 of the Receivership Order, the issuance of the Receiver's Certificate has the effect of creating a charge on the Property, by way of a fixed and specific charge as security for the repayment of the monies borrowed, together with interest and charges in priority to all statutory interests, trusts, liens, charges and

²⁰Receiver's Motion Record, Tab 2, First Report, para. 36.

²¹Receiver's Motion Record, Tab 2, First Report, paras 32-35, Appendix 8 and Appendix 9.

²²Receiver's Motion Record, Tab 2, First Report, para. 36, Appendix 10.

²³Receiver's Motion Record, Tab 2, First Report, para. 37, Appendix 11.

encumbrances, statutory or otherwise, in favour of any Person (as defined in the Receivership Order) but subordinate to the Receiver's Charge (as defined in the Receivership Order) and the charges set out in subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.²⁴

26. A title search conducted with respect to the Real Property shows the following registrations on title in order of priority:²⁵

- a) RO493091 being a Notice Zoning Regulations registered on March 4, 1985
- b) NR529711 being a Notice in favour of The Corporation of the City of St. Catharines registered on December 11, 2019
- c) NR547085 being a Notice in favour of The Regional Municipality of Niagara registered on July 22, 2020
- d) NR547245 being a first mortgage in favour of Royal Bank of Canada registered on July 23, 2000 in the principal amount of \$2,135,000
- e) NR647338 being a Certificate in favour of The Corporation of the City of St. Catharines registered on July 26, 2023
- f) NR670511 being a Notice in favour of The Corporation of the City of St. Catharines registered on July 12, 2024.

27. On December 19, 2025, the Receiver's counsel issued its security opinion and

²⁴Receiver's Motion Record, Tab 2, First Report, para. 38.

²⁵Receiver's Motion Record, Tab 2, First Report, para. 39, Appendix 12.

concluded that the RBC Mortgage is valid and enforceable,²⁶ and a senior charge over the Property subject to the claims under the Receivership Order.²⁷

28. The Receiver proposes to make the following distributions following the closing of the Transaction (the “**Proposed Distribution**”):²⁸

- a) repayment to RBC of the Receiver’s Borrowing in the amount of \$70,000.00 plus interest in accordance with the Receiver’s Borrowing Certificate;
- b) The Corporation of the City St. Catharines for all property tax arrears; and
- c) the balance of any and all funds in the Debtor’s estate to RBC on account of the Debtor’s secured indebtedness to RBC. It is anticipated that RBC will suffer a shortfall, and accordingly there will be no funds available for distribution to any other stakeholders.

PART III - ISSUES

29. The following are the issues on this motion:

- a) the Ahmed APS and the Transaction should be approved, and a vesting order granted such that the Purchaser is vested with all of the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Ahmed APS) free and clear of any claims and encumbrances (other than the permitted

²⁶Receiver’s Motion Record, Tab 2, First Report, para. 41, Appendix 13.

²⁷Receiver’s Motion Record, Tab 2, First Report, para. 42.

²⁸Receiver’s Motion Record, Tab 2, First Report, para. 44.

encumbrances identified in the Ahmed APS);

b) a sealing order over Confidential Appendices 1-7 of the First Report should be granted until the completion of the Transaction of the Real Property, or until a further Order of this Court;

c) the following activities of the Receiver should be approved:

- (i) the First Report, and the activities and conduct of the Receiver set out in the First Report;
- (ii) the Receiver's Interim Statement of Receipts and Disbursements;
- (iii) the McDougall Agreement is to be disclaimed;
- (iv) the fees and disbursements of the Receiver and its counsel are to be approved and paid;
- (v) the Fee Accrual are to be approved and paid;
- (vi) the Proposed Distribution is to be approved and paid
- (vii) effective upon the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, Spergel is discharged as Receiver including such ancillary relief.

PART IV - LAW & ANALYSIS

30. The First Report and the Receiver's activities described in it should be approved by this Court.

31. The Receiver's activities have been carried out pursuant to its duties and in accordance with the Receiver's powers derived from the Receivership Order. The Receiver has acted reasonably and in the best interests of the Debtor's stakeholders, and this Court has the inherent jurisdiction to approve such activities.²⁹

32. All of the Receiver's activities were conducted within the scope of its powers granted by the Receivership Order and each of the activities were necessary to ensure that the proceedings were as orderly, effective and fair to all stakeholders as possible.

Approval of the Proposed Sales Process

33. Receivers are clothed with the powers set out in the order appointing them. Receivers are consistently granted the power to market and sell property belonging to a debtor.³⁰

34. There are four factors the Court reviews in determining whether to authorize a sales process. The factors are:

- a) Is the sale transaction warranted at this time;

²⁹*Bank of America Canada v. Willann Investments Ltd.*, [1993] OJ No. 1647 at paras. 3 and 4 (Ont SCJ).

³⁰*Integrated Building Corp. v. Bank of Nova Scotia*, 1989 ABCA 114 (Alta CA); *Battery Plus Inc., Re*, 2002 CanLII 49569 at paras 2-3, 19, 22-23, 34-35.

- b) Will the sale benefit the “economic community”;
- c) Do any of the creditors have a bona fide reason to object to the sale of the business or assets; and
- d) Is there a better viable alternative.³¹

35. After the court is satisfied that it is appropriate to approve a sales process, when reviewing a sales process proposed by a receiver, the Court should consider the following factors:

- a) the fairness, transparency and integrity of the proposed process;
- b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,
- c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.³²

36. Although the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors which a court will take into account when considering the approval of a proposed sale. Those factors were identified by the Court of Appeal in *Royal Bank v. Soundair*:

- a) whether the receiver made a sufficient effort to obtain the best price and to not

³¹*Crate Marine*, 2015 ONSC 1062 at para 14 (Ont SCJ).

³²*CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at para 6 (Ont SJC).

act improvidently;

- b) the interests of all parties;
- c) the efficacy and integrity of the process by which the party obtained offers; and,
- d) whether the working out of the process was unfair.³³

37. In reviewing a receiver's decisions and recommendations, the Court exercises caution and grants considerable deference to the receiver. As confirmed by the Court of Appeal in *Regal Constellation Hotel Limited* stated:

Although the courts will carefully scrutinize the procedure followed by a receiver, they rely upon the expertise of their appointed receivers, and are reluctant to second-guess the considered business decisions made by the receiver in arriving at its recommendations. The court will assume that the receiver is acting properly unless the contrary is clearly shown.³⁴

38. The Sales Process recommended by the Receiver was reasonable and transparent. It was designated to realize upon the fair value of the Property and satisfies the criteria for approval.

39. This Court should approve the sales process undertaken by the Receiver including the Transaction for the following reasons:

³³ *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 at para 16 (Ont CA); *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at para 6 (Ont SCJ).

³⁴ *Regal Constellation Hotel Ltd., Re*, 2004 CanLII 206 at para. 23 (Ont CA).

- a) The sales process that resulted in the Ahmed APS included a reasonable marketing period to expose the Property to the open market;
- b) The Receiver has engaged an experienced real estate brokerage firm with Avison; and
- c) The sales process gave an opportunity to interested parties to submit offers.

40. The Receiver engaged the services of Antec and Colliers to attend at and conduct full narrative appraisals of the Property.³⁵ The Receiver requested and obtained sales and marketing proposals from Avison and CBRE.³⁶

41. The Receiver entered into an MLS Listing Agreement with Avison as the commission structure was commercially reasonable and the skill set of the brokerage would garner optimum recovery.³⁷ Avison widely marketed the Property to garner maximum interest and several offers to purchase. This included listing the Property on MLS and reaching out to over 4,800 contacts. This resulted in 32 interested parties executing Confidentiality Agreements, 27 people accessing the data room for the property and a number of interested parties touring the Real Property.³⁸ As a result of the marketing efforts described above, three offers were received.³⁹

42. On the basis of the marketing efforts, Receiver accepted the Ahmed APS.⁴⁰ The

³⁵Receiver's Motion Record, Tab 2, First Report, para. 20.

³⁶Receiver's Motion Record, Tab 2, First Report, para. 21.

³⁷Receiver's Motion Record, Tab 2, First Report, para. 22.

³⁸Receiver's Motion Record, Tab 2, First Report, para. 23, Confidential Appendix 5.

³⁹Receiver's Motion Record, Tab 2, First Report, para. 24, Confidential Appendix 6.

⁴⁰Receiver's Motion Record, Tab 2, First Report, para. 25.

sales process was one that resulted in the best price in these circumstances, considered the interests of all parties, was a fair and public process and was conducted in a commercially reasonable manner.⁴¹

43. The market was extensively canvassed pursuant to Avison's professional, and industry standard marketing efforts as provided for in the Avison sales and marketing proposal. The efforts of Avison through the listing of the Property on MLS and Avison's internal and external network have provided sufficient exposure of the Property to the market.⁴²

44. The terms and conditions contained within the Ahmed APS are commercially reasonable in all respects and that the purchase price in the Ahmed APS is at market value for the Property. It is the best outcome to the receivership estate in the circumstances.⁴³ RBC has also been consulted with respect to the Transaction and supports the completion of it.⁴⁴

The Sealing Order

45. It is necessary to the integrity of the receivership proceeding that Confidential Appendices 1-7 of the First Report be sealed. All of these appendices contain sensitive information, the release of which prior to the completion of the Transaction would be prejudicial to the stakeholders of the Debtor.

⁴¹Receiver's Motion Record, Tab 2, First Report, para. 27.

⁴²Receiver's Motion Record, Tab 2, First Report, para. 28.

⁴³Receiver's Motion Record, Tab 2, First Report, para. 29.

⁴⁴Receiver's Motion Record, Tab 2, First Report, para. 30.

46. The Court's jurisdiction to seal documents is in [s. 137\(2\) of the Courts of Justice Act](#):

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form a part of the public record.⁴⁵

47. In addition to statutory jurisdiction, the Court also has inherent jurisdiction to issue sealing orders as confirmed by the court in [Fairview Donut Inc. v. The TDL Group Corp.](#): “there is no doubt that the court has inherent jurisdiction, and jurisdiction under s. 137(2) of the *Courts of Justice Act*, to seal a portion of the court file.”⁴⁶

48. Sealing Orders are granted regularly in the context of court-appointed receiverships where court openness may pose a risk to the public interest in enabling stakeholders in an insolvency to maximize the realization of a debtor's assets. In this context, such an order is necessary to prevent a serious risk to an important commercial interest. The salutary effects of the sealing order outweigh its deleterious effects, which in this context includes the public interest in open and accessible court proceedings.⁴⁷

49. There are no reasonable alternative measures to a sealing order which would fulfill the twin purposes of (i) allowing this Court to review the reasonableness of the proposed Sales Process; and (ii) ensuring that the commercially-sensitive information contained within the identified appendices to the First Report is not available to the public prior to

⁴⁵ [Courts of Justice Act \(Ontario\)](#), s. 137(2).

⁴⁶ [Fairview Donut Inc. v. The TDL Group Corp.](#), 2010 ONSC 789 at para 34 (Ont SCJ).

⁴⁷ [Sierra Club of Canada v. Canada \(Minister of Finance\)](#), 2002 SCC 41 at paras. 53-57 (SCC); [Sherman Estate v. Donovan](#), 2021 SCC 25 at para 38 (SCC).

the completion of the Transaction.⁴⁸

50. Ontario Courts have recognized the customary practice of seeking a sealing order in the context of a sale approval motion. In *B&M Handelman Investments Ltd. v. Mass Properties Inc.*, the Court states:

[a]s is customary in sale approval motions, the Receiver seeks an order sealing the appraisal until the transaction is completed. This ensures the integrity of the process and avoids any prejudice to stakeholders in the event that the transaction does not close and a new purchaser must be sought.⁴⁹

51. The identified appendices contain sensitive commercial information. Should the Transaction not proceed, such information may cause a reduction in any future sale price of the Property, and harm the creditors of the Debtor if made available to the public. Protecting the information contained in those appendices is an important commercial interest that should be protected. There is no other reasonable alternative to sealing that will prevent those appendices from becoming public.

52. Confidential Appendices 1-7 should remain sealed until the completion of the Transaction, or by further Order of this Court.

⁴⁸ *Sherman Estate*, *supra*, at para. 38.

⁴⁹ *B&M Handelman Investments Limited v. Mass Properties Inc.*, 2009 CanLII 37930 at para 26 (Ont SJC); *Maxtech Manufacturing Inc. (Re)*, 2010 ONSC 1161 at paras. 29 and 30 (Ont SCJ).

Approval of Fees, the Fee Accrual and the Distribution

Approval of Receiver's and its Counsel's Fees

53. The professional fees of the Receiver and the Receiver's counsel, as detailed in the First Report, should be approved.

54. In determining whether to approve the fees of a receiver and its counsel, the Court should consider whether the remuneration and disbursements incurred in carrying out the receivership mandate are fair and reasonable, and take into consideration the following factors, which constitute a useful guideline, but are not exhaustive:

- a) the nature, extent and value of the assets;
- b) the complications and difficulties encountered;
- c) the degree of assistance provided by the debtor;
- d) the time spent;
- e) the Receiver's knowledge, experience and skill;
- f) the diligence and thoroughness displayed;
- g) the responsibilities assumed;
- h) the results of the receiver's efforts; and
- i) the cost of comparable services when performed in a prudent and

economical manner.⁵⁰

55. Appendix 8 to the First Report contains the affidavit of Philip Gennis and incorporates the Receiver's time dockets totaling \$33,380.29 inclusive of fees and disbursements up to and including October 28, 2025. This represents a total of 79.45 hours at an average hourly rate of \$371.72 excluding HST.⁵¹

56. Appendix 9 to the First Report contains the affidavit of Rachel Moses and includes the invoices of the Receiver's counsel up to December 15, 2025 in the amount of \$16,913.64 inclusive of disbursements and taxes.⁵²

57. All of the work set out in these accounts was carried out and was necessary, the hourly rates of the lawyers who worked on this matter are reasonable in light of the services required and the services were carried out by lawyers with the appropriate level of experience.⁵³

Approval of Fee Accrual

58. The Receiver estimates that the costs to complete the Transaction, if approved, and complete the administration of the estate including payment of the real estate commission should not exceed \$150,000.00 plus disbursements and HST. The Receiver is seeking approval to hold back this sum pending completion of all matters and the

⁵⁰[Bank of Nova Scotia v. Diemer](#), 2014 ONCA 851 at paras. 33 and 45 (Ont. CA).

⁵¹Receiver's Motion Record, Tab 2, First Report, para. 32, Appendix 8.

⁵²Receiver's Motion Record, Tab 2, First Report, para. 33, Appendix 9.

⁵³Receiver's Motion Record, Tab 2, First Report, para. 34.

Receiver's discharge.⁵⁴

Approval of Distribution

59. After the closing of the Transaction, the Receiver seeks approval to make the Proposed Distribution:⁵⁵

- a) repayment to RBC of the Receiver's Borrowing in the amount of \$70,000.00 plus interest in accordance with the Receiver's Borrowing Certificate;
- b) payment to the Corporation of the City of St. Catharines for all property tax arrears; and
- c) the balance of any and all funds in the Debtor's estate to RBC on account of the Debtor's secured indebtedness to RBC.

Disclaimer of McDougall Agreement

60. It is a requirement for the completion of the Transaction with the Purchaser that the McDougall Agreement be disclaimed. While the Receiver is aware of the impact that a disclaimer will have on McDougall, the Ahmed APS represents the best offer in terms of price obtained through a sales process that widely canvassed the market, considered the interests of all parties, was a fair and public process, and was done in a commercially reasonable manner. In not pursuing the disclaimer of the McDougall Agreement, the Receiver risks the termination of the Transaction since the Purchaser specifically

⁵⁴Receiver's Motion Record, Tab 2, First Report, para. 35.

⁵⁵Receiver's Motion Record, Tab 2, First Report, para. 44.

bargained for the right to use its own fuel supplier in subparagraphs 4(e)(i) and (ii) of the Ahmed APS. If the Transaction is terminated, then the deposit is likely returned to the Purchaser under paragraph 5 of the Ahmed APS and the Receiver must again restart a further marketing and sales process for the Property resulting in the same costs that were incurred in the first sales process and ongoing delay. There is no assurance that the Receiver will obtain an offer similar in price to the Ahmed APS.⁵⁶

61. Following the signing of a Confidentiality Undertaking by McDougall, the Receiver provided McDougall with a copy of the Ahmed APS and all other Confidential Appendices for which approval is being sought by the Receiver accompanied by a request for confirmation as to whether McDougall intended to exercise its ROFR with respect to the Real Property and the business operation located on it.⁵⁷

62. As of the date of the First Report, the Receiver has not received a response from McDougall as to its intention relative to the ROFR nor in regard to the Receiver's disclaiming of the McDougall Agreement.⁵⁸

63. The comments of the Court in 144 Park Ltd., Re are applicable when the Court is asked to disclaim a contract in the context of an insolvency proceeding:

I take from *Bayhold*, that the proposition should be (i) a court appointed receiver/manager is not personally liable on a contract made by the debtor prior to the appointment of the receiver/manager; (ii) however, the

⁵⁶Receiver's Motion Record, Tab 2, First Report, para. 18.

⁵⁷Receiver's Motion Record, Tab 2, First Report, para. 16.

⁵⁸Receiver's Motion Record, Tab 2, First Report, para. 16.

receiver/manager has a duty to maintain the goodwill of the debtor company and it is inconsistent with that duty to disregard contracts made by the debtor before the appointment of the receiver/manager; and (iii) the receiver/manager should apply to the court for permission to disregard the contract. In my view, that is the proper approach.⁵⁹

In Re Jade-Kennedy Development Corporation, Court file No. CV-10882-00CL, Justice Pattillo adopted the analysis of Morawetz J. in *Firm Capital* and applied the same test of taking into account the equitable considerations of all stakeholders to a trustee under the *Construction Lien Act* who sought permission to disclaim two purchase agreements of a residential condominium.⁶⁰

While the CCAA is not applicable, it does provide some guidance of what is to be considered when a debtor wishes to disclaim a contract without the approval of the monitor. Section 32(4) includes in the factors to be considered whether the disclaimer would likely cause significant financial hardship to a party to the agreement. This is consistent with the direction in *Firm Capital* that it is necessary to take into account the equitable considerations of all stakeholders.⁶¹

64. Taking into account the equitable considerations of all stakeholders in this case

⁵⁹ *144 Park Ltd., Re*, 2015 ONSC 6735 at para. 20 (Ont SCJ) [“**144 Park Ltd.**”].

⁶⁰ *144 Park Ltd.*, *ibid* at para. 22.

⁶¹ *144 Park Ltd.*, *ibid* at para.23.

means accepting the disclaimer of the McDougall Agreement, which itself is not opposed by McDougall for all of the reasons indicated above.

PART V – ORDER SOUGHT

65. The Receiver seeks the following relief:

- a) authorizing and directing the Receiver to carry out the terms of the Transaction pursuant to the Ahmed APS;
- b) vesting in the Purchaser all of the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Ahmed APS) free and clear of any claims and encumbrances (other than the permitted encumbrances identified in the Ahmed APS);
- c) sealing Confidential Appendices 1-7 of the First Report until the completion of Transaction of the Real Property (as defined below), or until a further Order of this Court;
- d) approving the First Report, and the activities and conduct of the Receiver set out in the First Report;
- e) approving the Receiver's Interim Statement of Receipts and Disbursements;
- f) approving the Receiver's request to disclaim the McDougall Agreement;
- g) approving the fees and disbursements of the Receiver and its counsel, and authorizing payment of such fees and disbursements;

- h) approving the Fee Accrual and its payment;
- i) approving the Proposed Distribution;
- j) that the Receiver and its affiliates, partners, directors, employees, advisers, agents, counsel and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the sales process, the Transaction and the Ahmed APS, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or willful misconduct of the Receiver, as determined by this Court; and
- k) that effective upon filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, Spergel is discharged as Receiver and granting certain ancillary relief in relation to such discharge.
- l) Such further and other relief as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of December, 2025.



Bart Sarsh
GOWLING WLG (CANADA) LLP
Lawyers for the Receiver, msi Spergel Inc.

SCHEDULE “A”

1. *Bank of America Canada v. Willann Investments Ltd.*, [1993] OJ No. 1647 (Ont SCJ)
2. *Integrated Building Corp. v. Bank of Nova Scotia*, 1989 ABCA 114
3. *Battery Plus Inc., Re*, 2002 CanLII 49569
4. *Crate Marine*, 2015 ONSC 1062
5. *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750
6. *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (Ont CA)
7. *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750
8. *Regal Constellation Hotel Ltd., Re*, 2004 CanLII 206 (Ont CA)
9. *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789
10. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41
11. *Sherman Estate v. Donovan*, 2021 SCC 25
12. *B&M Handelman Investments Limited v. Mass Properties Inc.*, 2009 CanLII 37930 (Ont SJC)
13. *Maxtech Manufacturing Inc. (Re)*, 2010 ONSC 1161
14. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851
15. *144 Park Ltd., Re*, 2015 ONSC 6735

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date December 22, 2025



Signature

ROYAL BANK OF CANADA

Applicant

- and - SMART SUPER MART LTD.

Respondent

Court File No. CV-24-00086229-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON

RECEIVER'S FACTUM
(Receiver's Motion for Approval and Vesting Order
and Approval, Distribution and Discharge Order)

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File No. G10047010

