

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

BANK OF MONTREAL

Applicant

- and -

ADVANTAGE MACHINE & TOOL INC.

Respondent

APPLICATION UNDER SUBSECTION 243 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

**FACTUM OF MSI SPERGEL INC., IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER OF ADVANTAGE MACHINE & TOOL INC.**

June 17, 2026

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Lawyers for the Receiver, msi Spergel Inc.

PART I - OVERVIEW

1. At the return of this motion, msi Spergel Inc., receiver of Advantage Machine & Tool Inc., seeks an order, amongst other things, (a) approving the distribution of proceeds from the receivership estate; (b) approving the conduct of the receiver and related professional fees; and (c) approving the discharge of the receiver after all remaining material matters in this proceeding have been attended to.
2. The requested relief is necessary to bring these receivership proceedings to a close.
3. The relief sought is, in the Receiver's submission, uncontroversial and typical relief in a receivership proceeding of this nature. The Receiver has completed the realization of the Company's assets, and the proposed distributions respect the applicable priority waterfall established by the *Bankruptcy and Insolvency Act* and related legislation. Following distribution of the Company's assets, all material steps in this receivership proceeding will be complete.
4. Capitalized terms that are otherwise not defined herein shall have the meaning given to them in the Second Report.

PART II - SUMMARY OF FACTS

5. The Company is a privately owned Ontario corporation that formerly carried on business as an engineering, integration, and manufacturing service provider, producing tools, dies, jigs, fixtures and providing custom machining, welding, and light assembly services, as well as equipment repairs.¹ Its clients included automotive, medical and food processing

¹ Second Report at para. 3, Tab 2 to the Motion Record of msi Spergel Inc. dated June 12, 2026 (the "**Motion Record**").

companies in Southwestern Ontario and the United States. The Company operated from owned premises located at 155 Huron Road, Mitchell, Ontario.²

6. msi Spergel Inc. (“**Spergel**” or “**Receiver**”) was appointed on July 24, 2025 by order of Justice Smith (“**Appointment Order**”).³ Since that time, the Receiver has (among other things) realized upon the Company’s assets, including the sale of the Company’s real property located at 155 Huron Road, Mitchell, Ontario (“**Real Property**”) and its equipment (together, “**Transactions**”).⁴ The Transactions were approved by the Court on February 12, 2026 and closed on February 24, 2026.⁵
7. The aggregate gross cash purchase price under the Transactions was \$2,350,000; \$2,000,000 in respect of the Real Property and \$350,000 in respect of the equipment.⁶
8. Following its last appearance before the Court on February 12, 2026, the Receiver has, with the assistance of its independent legal counsel Miller Thomson LLP, amongst other things: (a) continued to facilitate the release of certain leased equipment; (b) obtained court approval of the Transactions; (c) closed the Transactions; (d) attended to post-closing matters; (e) distributed funds to the Municipality of West Perth in accordance with the Ancillary Order; (f) cancelled the Company’s insurance coverage; (g) notified suppliers and utility companies of the sale; (h) continued communicating with Service Canada in the

² Second Report at para. 3, Tab 2 to the Motion Record.

³ Appointment Order, Tab 2A to the Motion Record.

⁴ Second Report at para. 6, Tab 2 to the Motion Record.

⁵ Second Report at para. 6, Tab 2 to the Motion Record.

⁶ Second Report at para. 45, Tab 2 to the Motion Record.

administration of the Wage Earner Protection Program; and (i) prepared and filed all statutory notices in accordance with the *Bankruptcy and Insolvency Act* (“**BIA**”).⁷

9. This receivership proceeding is now in its final stages, with the only outstanding material items being the distribution of the Company’s assets and the discharge of the receiver.
10. Further detail regarding the factual background to this motion is found in the Second Report.
11. At the return of this motion the Receiver seeks an Order (“**Distribution and Discharge Order**”):
 - (a) approving the Receiver’s Second Report to the Court dated May 27, 2026 (“**Second Report**”) and the activities of the Receiver described therein;
 - (b) approving the Receiver’s Interim Statement of Receipts and Disbursements as at May 26, 2026;
 - (c) approving the fees and disbursements of the Receiver and Miller Thomson, as set out in the Second Report including the fee affidavits appended thereto (“**Fee Affidavits**”);
 - (d) approving a fee accrual of \$35,000.00 (excluding HST and disbursements) (“**Fee Accrual**”) in respect of the fees incurred or to be incurred by the Receiver and Miller Thomson in connection with the within motion and the completion of the Receiver’s remaining duties;

⁷ Second Report at para. 14, Tab 2 to the Motion Record.

- (e) authorizing and directing the Receiver to make distributions to Service Canada, the Bank of Montreal (“**BMO**”), and the Canada Revenue Agency (“**CRA**”); and
- (f) discharging Spergel as the Receiver and releasing Spergel from any and all liability, effective upon filing of a certificate by the Receiver certifying that all outstanding matters have been completed to the satisfaction of the Receiver.

PART III - STATEMENT OF ISSUES

12. There are five issues before this Honourable Court:

- (a) Whether this Court should approve the Second Report and the activities of the Receiver described therein;
- (b) Whether this Court should approve the fees and disbursements of the Receiver and Miller Thomson;
- (c) Whether this Court should approve the proposed distributions;
- (d) Whether this Court should approve the Fee Accrual; and
- (e) Whether Spergel should be discharged as Receiver and released from liability.

PART IV - LAW AND ARGUMENT

A. THE SECOND REPORT AND THE ACTIVITIES OF THE RECEIVER SHOULD BE APPROVED

13. The activities of the Receiver following the Appointment Date are described in detail in the Second Report.

14. The Court has jurisdiction to approve the activities of a receiver appointed by it either by the terms of the appointing order or through the inherent jurisdiction of the court to supervise the conduct of court appointed officers.⁸
15. In *Target Canada Co., Re*, Morawetz, RSJ (as he then was) stated that a request to approve a court officer's report "is not unusual" and that "there are good policy and practical reasons" to do so, including (among others):⁹
- (a) Brings the court officer's activities before the Court;
 - (b) Allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
 - (c) Enables the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;
 - (d) Provides protection for the court officer; and
 - (e) Protects the creditors from the delay and disruption that would be caused by re-litigation of steps previously taken and indemnity claims.
16. In *Hanfeng Evergreen Inc., Re*, Myers J. held that the same policy and practical considerations from *Target* apply when considering approval of a receiver's conduct.¹⁰

⁸ See *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, [2014 BCSC 1855](#) at [para. 54](#) citing *Bank of America Canada v. Willann Investments Ltd.* (1993), 20 C.B.R. (3d) 223; aff'd [1996 CanLII 2782](#) (ONCA).

⁹ *Target Canada Co., Re*, [2015 ONSC 7574](#) at [para. 12](#).

¹⁰ *Hanfeng Evergreen Inc., Re*, [2017 ONSC 7161](#) at [para. 17](#).

17. The Receiver submits that it is appropriate to approve the Second Report and the conduct of the Receiver described therein. The Receiver has acted responsibly and diligently and has carried out its activities in a manner consistent with the provisions of the Appointment Order and the BIA.

B. THE PROFESSIONAL FEES SHOULD BE APPROVED

18. The Appointment Order states, in relevant part,

18. ...the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges...

19. ...the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. In approving the accounts of the Receiver and its legal counsel, the compensation sought must be fair and reasonable having regard to all relevant factors including the following,
- (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.¹¹
20. In *Laurentian University*, Chief Justice Morawetz held that the role of the Court on a motion to pass accounts is to evaluate them based on the “overriding principle of reasonableness.” The overall value of the services provided is the predominant consideration in assessing the reasonableness of the accounts. The Court does not engage in a docket-by-docket assessment of the accounts, as minute details of each element of the professional services may not be instructive when viewed in isolation. The focus on the fair and reasonable assessment should be on what was accomplished.¹²
21. The accounts of the Receiver for the period of December 1, 2025 to April 30, 2026, are \$61,800.84 inclusive of disbursements and HST. The Receiver billed a total of 156.75 hours at an average rate of \$346.91 per hour.¹³ The accounts of Miller Thomson for the period of December 30, 2025 to April 30, 2026, are \$47,901.92 inclusive of fees, disbursements and HST. Miller Thomson billed a total of 63.1 hours at an average rate of \$653.40 per hour.¹⁴
22. The Receiver respectfully submits that the Professional Fees are fair and reasonable, in accordance with the standards established in *Diemer* and *Laurentian University*. The Professionals Fees: (a) were incurred at comparable and competitive rates that reflect the appropriate responsibility, scope, and complexity of the case; (b) are reasonable given the

¹¹ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) (CanLII) at [para. 45](#).

¹² *Laurentian University, Re*, Endorsement dated May 18, 2022 (2022 ONSC 2927), para. 9 [not available on CanLII].

¹³ Fee Affidavit of Trevor Pringle sworn May 25, 2026 at para. 3, Tab 2H to the Motion Record.

¹⁴ ¹⁴ Fee Affidavit of Tony Van Klink sworn May 26, 2026 at paras. 3 and 4, Tab 2I to the Motion Record.

magnitude and scope of work involved; and (c) were necessary and consistent with the Receiver's duties under the Appointment Order.

23. The Second Report describes what was accomplished by the Receiver and Miller Thomson during the work period covered by the Fee Affidavits of Trevor Pringle¹⁵ and Tony Van Klink, respectively;¹⁶ this work is summarized at paragraph 8 above.

C. THE PROPOSED DISTRIBUTIONS SHOULD BE APPROVED

24. Under paragraph 3(r) the Receiver is authorized to take any steps reasonably incidental to the exercise of its powers under the Appointment Order.¹⁷ The Appointment Order empowers the Receiver to take possession of and market and sell the Company's assets.¹⁸

The distribution of sale proceeds is a logical and necessary next step.

25. The Receiver is currently holding \$2,286,531.35 of cash, substantially all of which was generated by the Transactions.¹⁹

26. The Receiver proposes to distribute all of the Company's available cash, net of the Fee Accrual, as follows:²⁰

- (a) First, to Service Canada in the amount of \$94,988.08 on account of its priority WEPP claim;

¹⁵ Fee Affidavit of Trevor Pringle sworn May 25, 2026, Tab 2H to the Motion Record.

¹⁶ Fee Affidavit of Tony Van Klink sworn May 26, 2026, Tab 2I to the Motion Record.

¹⁷ Appointment Order at para. 3(r), Tab 2A to the Motion Record.

¹⁸ Appointment Order at para. 3(j), Tab 2A to the Motion Record.

¹⁹ Second Report at para. 44, Tab 2 to the Motion Record.

²⁰ Second Report at paras. 47(a)-(c), Tab 2 to the Motion Record.

- (b) Second, to BMO from net Real Property Transaction sale proceeds in an amount up to initially registered amount of the BMO Charge (\$1,875,000), on account of its mortgage security; and
- (c) Third, to CRA, in amount equal to the balance of the remaining cash less the Fee Accrual and disbursements, on account of its Deemed Trust Claims.
27. The Receiver estimates that the distribution to BMO will be approximately \$1,500,000 – the exact number will be determined prior to the return of this motion and will be included in the form of Distribution and Discharge Order.
28. These proposed distributions reflect the applicable statutory priorities.
29. Service Canada holds a priority claim of \$94,988.08²¹ under the *Wage Earner Protection Plan Act* (“**WEPPA**”)²², which ranks above all other claims pursuant to subsection 81.4(4) of the BIA.²³
30. The CRA holds deemed trust claims (“**Deemed Trust Claims**”) for unremitted source deductions of \$1,465,676.84 and unremitted HST of \$97,862.37.²⁴
31. Section 227 of the *Income Tax Act* establishes a statutory deemed trust in favour of the CRA for unremitted source deductions;²⁵ and section 222 of the *Excise Tax Act* establishes a statutory deemed trust in favour of the CRA for unremitted HST.²⁶

²¹ Second Report at para. 16, Tab 2 to the Motion Record.

²² *Wage Earner Protection Plan Act*, SC 2005, c 47, s 1, as amended.

²³ *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended, ss. 81.4(4).

²⁴ Second Report at para. 15, Tab 2 to the Motion Record.

²⁵ *Income Tax Act*, RSC 1985, c 1 (5th Supp), as amended (the “*ITA*”), s. 227.

²⁶ *Excise Tax Act*, RSC 1985, c. E-15, as amended (the “*ETA*”), ss. 222

32. Section 227(4.2) of the *Income Tax Act* exempts a “prescribed security interest” from the deemed trust in favour of source deductions;²⁷ a “prescribed security interest” is defined in Regulation 2201 of the *Income Tax Regulations*.²⁸
33. Section 222(4) of the *Excise Tax Act* exempts a “prescribed security interest” from the deemed trust in favour of unremitted HST;²⁹ a “prescribed security interest” is defined in the *Security Interest (GST/HST) Regulations* (SOR/2011-55).³⁰
34. Put simply, a “prescribed security interest” includes a mortgage over land or a building that secures a debtor’s obligations, provided the mortgage was registered under the applicable land registration system before the deemed trust arose; if a lender registered its mortgage against real property before the debtor failed to remit source deductions, the lender’s mortgage can take priority over the Crown’s deemed trust — up to a certain amount.
35. That amount is calculated under the Regulations. The prescribed security interest is capped at the outstanding balance of the mortgage obligation at the time of the failure to remit, minus two things: first, the value of any other security the lender holds for that same obligation; and second, any amounts that have been applied against the obligation after the time the debtor failed to remit.
36. BMO holds a collateral mortgage charge over the Real Property (“**BMO Charge**”), initially registered on January 7, 2022 in the maximum principal amount of \$1,875,000,

²⁷ *ITA*, 227(4.2)

²⁸ *Income Tax Regulations*, CRC, c 945, as amended, s. 2201.

²⁹ *ETA*, s. 222(4).

³⁰ *Security Interest (GST/HST) Regulations* (SOR/2011-55), as amended, s. 2(1).

plus interest and costs. (BMO also holds a general security agreement over the Company's personal property.³¹)

37. Miller Thomson has provided a security opinion confirming that, subject to customary assumptions and qualifications, the security interests in favour of BMO against the Real Property and the Company's personal property are valid and enforceable in the Province of Ontario.³²
38. The BMO Charge is a "prescribed security interest" under the *Income Tax Act* and the *Excise Tax Act*:
- (a) The BMO Charge is a collateral mortgage, securing all obligations of the borrower to BMO;³³
 - (b) The BMO Charge was registered in Ontario's land titles system before the Deemed Trust Claims arose;³⁴
 - (c) There is no recovery available to BMO under its GSA;³⁵
 - (d) BMO has not received any amounts under its personal guarantee from Advantage's principal, and any recovery is at best uncertain;³⁶ and

³¹ Second Report at para. 24, Tab 2 to the Motion Record.

³² Second Report at para. 13, Tab 2 to the Motion Record; see Tab 2A to the Motion Record.

³³ Second Report at para. 43(a), Tab 2 to the Motion Record.

³⁴ Second Report at paras. 43(b) and (c), Tab 2 to the Motion Record.

³⁵ Second Report at para. 43(e), Tab 2 to the Motion Record.

³⁶ Second Report at para. 43(f), Tab 2 to the Motion Record.

- (e) The obligations secured by the BMO Charge were never reduced below the initially registered charge amount of \$1,875,000.³⁷

39. Accordingly, the full amount of the obligations secured by the BMO Charge is exempted from the CRA's Deemed Trust Claims in respect of the Real Property.

D. THE FEE ACCRUAL SHOULD BE APPROVED

40. The Receiver estimates that the Fee Accrual of \$35,000.00 (excluding HST and disbursements) is necessary to pay the outstanding Professional Fees and the fees and expenses required to complete the administration of this receivership.³⁸

41. The Receiver respectfully submits that the Fee Accrual is reasonable and necessary to ensure the orderly completion of the receivership.

E. SPERGEL SHOULD BE DISCHARGED AS RECEIVER, AND RELEASED FROM LIABILITY

42. A court-appointed receiver is an officer and instrument of the court. Typically, a court-appointed receiver is discharged by the court once it has completed the substance of its mandate.³⁹

43. A receiver will typically seek a full release upon discharge because of the receiver's concern that, if it is discharged without a full release, it may be required to spend time and money defending unmeritorious actions commenced after its discharge. Once discharged, a receiver is unable to recover from the estate costs in defending such actions.⁴⁰ The

³⁷ Second Report at para. 43(d), Tab 2 to the Motion Record.

³⁸ Second Report at paras. 49(ii)(A) to (B), Tab 2 to the Motion Record.

³⁹ *Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.*, [2009 CanLII 55113](#) (ON SC) at [para. 8](#).

⁴⁰ *Ibid.*

purpose of the release provisions in the Distribution and Discharge Order is to remove the necessity for the holding back of post-receivership funds and/or conducting of a “claims bar” process, both of which add time and cost to the receivership.⁴¹

44. The Receiver has completed the realization of the Company’s assets and will attend to the distributions described above and any remaining administrative matters prior to filing a certificate of discharge.⁴²
45. The draft order contains standard provisions providing for the Receiver’s release from liability upon its discharge (subject to the usual exceptions for gross negligence and wilful misconduct) and permitting the Receiver to continue to perform any incidental and necessary duties. The Receiver’s release is a standard term in the Commercial List model order of discharge which has, in the absence of any evidence of improper or negligent conduct on the part of the Receiver, been routinely granted.⁴³
46. The proposed discharge is to be effective upon the Receiver filing with the Court a certificate certifying that all outstanding matters to be attended to in connection with the receivership of the Company have been completed to the satisfaction of the Receiver.

⁴¹ *Ogopogo Beach Resort Ltd v Happy Valley Resort Ltd*, [2010 BCSC 996](#) (CanLII) at [para 39](#); *Ed Mirvish Enterprises Ltd v. Stinson Hospitality Inc.*, *supra* note 37 at [para. 13](#); *Holmes v Schonfeld Inc.*, [2016 ONCA 148](#) (CanLII) at [para. 46](#) and [47](#).

⁴² Second Report at para. 51, Tab 2 to the Motion Record.

⁴³ *Pinnacle v. Kraus Inc.*, [2012 ONSC 6376](#) (CanLII) at [para. 47](#); *Kingsett Mortgage Corporation v Churchill Lands United Inc.*, [2024 ONSC 7127](#) (CanLII) at [para. 47](#).

47. The Receiver respectfully submits that its discharge is appropriate in the circumstances, as it has completed the realization of the Company's assets and will have attended to all distributions and remaining administrative matters prior to filing its certificate of discharge.

PART V - ORDERS REQUESTED

48. For the reasons set out herein, the Receiver respectfully requests that this Court grant the Distribution and Discharge Order in substantially the same form as found at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of June, 2026.


Patrick Corney

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Lawyers for the Receiver, msi Spergel Inc.

**SCHEDULE “A”
LIST OF AUTHORITIES
(In Order of appearance)**

1. *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, [2014 BCSC 1855](#).
2. *Bank of America Canada v Willann Investments Ltd.*, [1996 CanLII 2782](#) (ONCA).
3. *Target Canada Co., Re*, [2015 ONSC 7574](#).
4. *Hanfeng Evergreen Inc., Re*, [2017 ONSC 7161](#).
5. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#).
6. *Laurentian University, Re*, [Endorsement dated May 18, 2022](#) (2022 ONSC 2927).
7. *Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.*, [2009 CanLII 55113](#) (ON SC).
8. *Ogopogo Beach Resort Ltd v Happy Valley Resort Ltd*, [2010 BCSC 996](#).
9. *Holmes v Schonfeld Inc*, [2016 ONCA 148](#).
10. *Pinnacle v. Kraus Inc.*, [2012 ONSC 6376](#).
11. *Kingsett Mortgage Corporation v Churchill Lands United Inc*, [2024 ONSC 7127](#).

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

June 17, 2026

Date



Signature

**SCHEDULE “B”
RELEVANT STATUTES & REGULATIONS**

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3.

Wage Earner Protection Program

81.4 (1) If a receiver is appointed under subsection 243(1), the court may order that the claim of a clerk, servant, travelling salesperson, labourer or worker who is owed wages, salary, commission or compensation for work done or services rendered to the debtor during the period beginning on the day that is six months before the date of the appointment and ending on the date of the appointment, has a charge on the current assets of the debtor, in priority to the claims of the secured creditors, for an amount equal to the lesser of two thousand dollars and the amount owing to the clerk, servant, travelling salesperson, labourer or worker.

[...]

Rank of security

(4) A security under this section ranks above every other claim, right, charge or security against the person’s current assets — regardless of when that other claim, right, charge or security arose — except rights under sections 81.1 and 81.2.⁴⁴

Court-appointed receivers

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

[...]

Duty to act honestly and in good faith

246 A receiver shall act honestly and in good faith and comply with the provisions of this Act and the court order appointing the receiver.

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp).

Deemed trust for source deductions

227 (4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from

⁴⁴ Rights of unpaid suppliers to repossess goods; and specified rights of farmers, fishermen and aquaculturists.

property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

(4.2) Notwithstanding any other provision of this Act, the Bankruptcy and Insolvency Act (except sections 81.1 and 81.2 of that Act), the Tax Court of Canada Act, any other enactment of Canada or a province, or any law, Her Majesty's claim under subsection (4) in respect of a tax, interest, penalties or other amount payable under this Act has priority over the claim of a holder of a prescribed security interest (as defined in subsection 224(1.3)) if the prescribed security interest was granted by the person and the amount of the claim was not collected from the person as required under this Act.

Income Tax Regulations, C.R.C., c. 945.

Security Interests

2201 (1) For the purpose of subsection 227(4.2) of the Act, prescribed security interest, in relation to an amount deemed by subsection 227(4) of the Act to be held in trust by a person, means that part of a mortgage securing the performance of an obligation of the person, that encumbers land or a building, where the mortgage is registered pursuant to the appropriate land registration system before the time the amount is deemed to be held in trust by the person.

(2) For the purpose of subsection (1), where, at any time after 1999, the person referred to in subsection (1) fails to pay an amount deemed by subsection 227(4) of the Act to be held in trust by the person, as required under the Act, the amount of the prescribed security interest referred to in subsection (1) is deemed not to exceed the amount by which the amount, at that time, of the obligation outstanding secured by the mortgage exceeds the total of

(a) all amounts each of which is the value determined at the time of the failure, having regard to all the circumstances including the existence of any deemed trust for the benefit of Her Majesty pursuant to subsection 227(4) of the Act, of all the rights of the secured creditor securing the obligation, whether granted by the person or not, including guarantees or rights of set-off but not including the mortgage referred to in subsection (1), and

(b) all amounts applied after the time of the failure on account of the obligation,

so long as any amount deemed under any enactment administered by the Minister, other than the Excise Tax Act, to be held in trust by the person, remains unpaid.

Excise Tax Act, R.S.C. 1985, c. E-15.

Deemed trust for HST

222 (1) Subject to subsection (1.1), every person who collects an amount as or on account of tax under Division II is deemed, for all purposes and despite any security interest in the amount, to hold the amount in trust for Her Majesty in right of Canada, separate and apart from the property of the person.

[...]

Meaning of security interest

(4) For the purposes of subsections (1) and (3), a security interest does not include a prescribed security interest.

Security Interest (GST/HST) Regulations (SOR/2011-55)

Prescribed Security Interest

2 (1) For the purpose of subsection 222(4) of the Act, a prescribed security interest, in relation to an amount deemed under subsection 222(1) of the Act to be held in trust by a person, is that part of a mortgage or hypothec securing the performance of an obligation of the person that encumbers land or a building, but only if the mortgage or hypothec is registered pursuant to the appropriate land registration system before the time the amount is deemed under subsection 222(1) of the Act to be held in trust by the person.

(2) For the purpose of subsection (1), if, at a particular time, an amount deemed to be held in trust by the person referred to in that subsection is not remitted to the Receiver General or withdrawn in the manner and at the time provided under Part IX of the Act, the amount of the prescribed security interest referred to in that subsection may not exceed the amount determined by the following formula until such time as all amounts deemed under subsection 222(1) of the Act to be held in trust by the person are withdrawn in accordance with subsection 222(2) of the Act or are remitted to the Receiver General:

where

A is the amount of the obligation secured by the mortgage or hypothec that is outstanding at the particular time; and

B is the total of

(a) all amounts, each of which is the value determined at the particular time, having regard to all the circumstances including the existence of any deemed trust for the benefit of Her Majesty pursuant to subsection 222(1) of the Act, of all the rights of the secured creditor securing the obligation, whether granted by the person or not, including guarantees or rights of set-off or of compensation but not including the mortgage or hypothec referred to in subsection (1), and

(b) all amounts applied after the particular time on account of the obligation.

BANK OF MONTREAL

Applicant

and

ADVANTAGE MACHINE & TOOL INC.

Respondent

Court File No: CV-25-00001158-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Kitchener

FACTUM OF MSI SPERGEL INC.
(Motion Returnable June 25, 2026)

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