

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

BALLO CARRIERS INC., 1000228842 ONTARIO INC., BHUPINDERJOT SINGH BOPARAI
and NAWABBIR SINGH BOPARAI

Respondents

FACTUM OF THE RECEIVER
(Receiver's Motion returnable May 1, 2026)

April 22, 2026

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TO: SERVICE LIST

PART I – NATURE OF MOTION

1. This is a motion by msi Spergel inc. ("**Spergel**") in its capacity as Court-appointed receiver (in such capacity, the "**Receiver**"), appointed pursuant to an order of the Ontario Superior Court of Justice (the "**Court**") dated August 15, 2024 (the "**Appointment Order**") of the Property (as defined in the Appointment Order) of the Respondents, Ballo Carriers Inc., ("**Ballo**"), and 1000228842 Ontario Inc. ("**1000**", and together with Ballo, the "**Debtors**") for, *inter alia*, the following relief:
 - a) abridging the time for service, filing and confirmation of the Notice of Motion and the Motion Record, and validating service so that this motion is properly returnable May 1, 2026;
 - b) approving the Third Report of the Receiver dated February 19, 2026 (the "**Third Report**") and the activities and conduct of the Receiver set out therein, 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 Third Report;
 - c) approving the Receiver's Statement of Receipts and Disbursements as detailed in the Third Report;
 - d) approving the fees and disbursements of the Receiver, the fees and disbursements of its counsel (the "**Professional Fees**") and the Fee Accrual (as defined in the Third Report), and authorizing payment of same;
 - e) after payment of the Professional Fees, and subject to the Fee Accrual, approving, authorizing and directing the Receiver to complete the Proposed Distribution, as described in the Third Report;
 - f) that upon payment of the amounts set out in paragraphs 1) d) and e) hereof and upon the Receiver completing its remaining duties, as described in the Third Report, 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 Spergel in its capacity as Receiver; and

- g) releasing Spergel as Receiver from liability for its actions while acting in such capacity, save and except for the Receiver's gross negligence or willful misconduct.

2. It is the position of the Receiver that the Receiver's actions should be approved, and the relief requested should be granted for the following reasons:

- a) the Receiver's actions were reasonable and the Receiver, at all times, acted within its mandate in carrying out its actions, pursuant to the provisions of the Appointment Order;
- b) the Professional Fees and the Statement of Receipts and Disbursements are reasonable in the circumstances and the Distribution is reasonable;
- c) There is no prejudice to the Receiver's discharge, as:
 - (i) any creditors of the Debtors will have rights against the assets (if any) of the Debtors; and
 - (ii) there are no records of employees and therefore no ability for the Receiver to administer any employee claims to WEPP payments.

PART II – THE FACTS

The Debtors and the Receiver

3. Ballo is a company incorporated pursuant to the laws of Ontario, and carried on business as a transporter of goods. Ballo operated from the premises municipally known as 2131 Williams Parkway, Unit 17, Brampton, Ontario (the "**Real Property**"). Bhupinderjot Singh Boparai, Nawabbir Singh Boparai ("**Nawabbir**") and Sukhpinder Kaur Boparai are the principals of Ballo.

Third Report of Receiver, dated February 19, 2026 (the “Third Report”), para 2.

4. 1000 is a private corporation incorporated under the laws of the Province of Ontario. 1000 owns the Real Property. Nawabbir is the principal of 1000.

Third Report, para 3 and Appendix “11” thereto.

5. Upon application of The Toronto-Dominion Bank (“TD”), a secured creditor of the Debtors, the Honourable Justice Doi issued the Appointment Order, appointing Spergel as Receiver over all of the assets, undertakings, and properties of the Debtors acquired for, or used in relation to the businesses carried on by the Debtors, including the Real Property owned by 1000, and all proceeds thereof (collectively, the “Property”).

Third Report, para 4 and Appendix “1” thereto.

6. Pursuant to an Order of this Court made on March 11, 2025 (the “**Ballo Sale Approval Order**”), a sale of certain assets of Ballo by way of auction (the “**Ballo Assets**”) was approved.

Third Report, para 8 and Appendices “5” and “6” thereto.

7. Pursuant to an Order of this Court made on September 12, 2025 (the “**Real Property Sale Approval Order**”), a sale of the Real Property was approved.

Third Report, para 12 and Appendices “9” and “10” thereto.

The Receiver’s Activities

8. Since its Second Report, the Receiver has attended to, *inter alia*, the following:
 - a) Pursuant to the Ballo Sale Approval Order, the Ballo Assets were entrusted to Ritchie Bros. Auctioneers (Canada) Ltd. (“**Ritchie Bros.**”) to be sold at an auction sale;
 - b) The Receiver has been advised by Ritchie Bros. that all of the Ballo Assets have been sold;

- c) The proceeds of the auction sales, net of sales commissions and other sale costs received to date are being held by the Receiver in a dedicated trust account maintained with respect to the receivership pending further order of the Court;
- d) Pursuant to the Real Property Sale Approval Order, the Receiver completed the sale of the Real property and is currently holding the sale proceeds pending further order of the Court;
- e) The Receiver is of the view that the sales process was such that it 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.

Third Report, paras 17-22.

Stakeholders of the Debtors' Estate

- 9. TD holds a first mortgage (the "**TD Mortgage**") over the Real Property in the principal amount of \$750,000.00. As of January 19, 2026, the amount owing under the TD Mortgage was \$799,665.48 with costs and interest accruing.

Third Report, paras 23 and 24.

- 10. 2412338 Ontario Inc. holds a second mortgage (the "**2412 Mortgage**") over the Real Property in the principal amount of \$200,000.00.

Third Report, para 25.

- 11. TD is the sole registrant against 1000 under the *Personal Property Security Act*.

Third Report, para 28 and Appendix "12" thereto.

- 12. With respect to two of the Ballo Assets recovered by the Receiver and sold at auction, in addition to TD, there are registrations in favour of the Minister of Finance for Ontario (the "**Ministry**") and 1539315 Ontario Inc., o/a HK Tire Centre ("**HK Tire**").

Third Report, para 29 and Appendix "13" thereto.

13. With respect to the security interests in favour of the Ministry and HK Tire, the Receiver has confirmed that the Ministry's claim is unsecured and that no lien is claimed, and, despite multiple enquiries by the Receiver and Receiver's Counsel, HK Tire has provided no support for its claimed secured interest. Accordingly, no distribution will be made to the Ministry, and the Receiver proposes to distribute the recoveries from the sale of the Ballo Assets without regard to the claimed lien of HK Tire.

Supplement to Third Report, dated April 21, 2026 ("Supplement to Third Report"), paras 3 and 4.

14. The Receiver obtained an independent security opinion confirming the validity and enforceability of the TD Mortgage and the 2412 Mortgage.

Third Report, para 31 and Appendix "14" thereto.

15. Pursuant to the Real Property Sale Approval Order, the TD Mortgage and the 2412 Mortgage were vested out, expunged, and discharged from title to the Real Property.

Third Report, para 26 and Appendix "11" thereto.

16. The Receiver has communicated with the Canada Revenue Agency ("CRA") with respect to 1000, however, to date, CRA has not provided the Receiver with any claim for either Harmonized Sales Tax ("HST") or payroll deductions.

Third Report, para 32.

Professional Fees and Disbursements

17. The fees of the Receiver total \$10,334.98 for the period of May 1, 2025, to December 31, 2025, inclusive of disbursements and HST, as detailed in the Third Report.

Third Report, para 33 and Appendix "15" thereto.

18. The fees and disbursements of Harrison Pensa LLP, as counsel for the Receiver, total \$30,304.31 for the period of June 9, 2025 to February 12, 2026, inclusive of disbursements and HST.

Third Report, para 34 and Appendix "16" thereto.

19. It is the position of the Receiver that such fees and disbursements as set out above are reasonable and necessary and should be approved by this Honourable Court.

Third Report, para 35.

20. Provided that there is no opposition to the relief sought and that such relief is granted, the Receiver estimates that the costs to complete the Transaction and administration of the estate should not exceed \$100,000.00 plus disbursements and HST. As such, the Receiver is seeking approval to hold back this sum pending completion of all matters and the Receiver's discharge (the "**Fee Accrual**").

Third Report, para 36.

Statement of Receipts and Disbursements

21. The Receiver's Interim Statements of Receipts and Disbursements as at January 31, 2026, are detailed in the Third Report.

Third Report, para 37 and Appendix "17" thereto.

22. It is the Receiver's position that such receipts and disbursements are reasonable and should be approved.

Proposed Distribution

23. On the basis of the foregoing, the Receiver proposes to make the following distributions of the proceeds of the sale of the Ballo Assets and the Real Property, after payment of the fees of the Receiver and the Receiver's Counsel described in the Third Report, including the Fee Accrual, as follows:

Ballo Assets Distributions

- a) To TD with respect to the indebtedness of Ballo to the extent of the debt owing to TD, including interests and costs;

Real Property Distributions

- b) To TD with respect to the indebtedness of 1000 on account of the TD Mortgage to the extent of the debt owing to TD. The debt to TD to and including April 30, 2026, is \$762,617.34 plus accrued interest to the date of distribution by the Receiver; and
- c) To 2412338 Ontario Inc. (“**2412**”) with respect to the indebtedness of 1000 on account of the 2412 Mortgage to the sum of \$59,241.34, subject to any additional interest paid to TD from May 1, 2026, to the date of distribution by the Receiver

(the “**Proposed Distribution**”).

Supplement to Third Report, para 5 and Appendix “1” thereto.

- 24. It is anticipated that TD will suffer a shortfall with respect to the Ballo debt and that 2412 will suffer a shortfall on its mortgage debt, and accordingly there will be no funds available for distribution to any other stakeholders.

Supplement to Third Report, para 5.

Discharge of the Receiver

- 25. In the event that the Court grants the relief sought, the Receiver proposes to attend to the following outstanding matters:
 - a) Payment of the fees and disbursements of the Receiver and its Counsel;
 - b) Payment of the approved distributions;
 - c) Preparing and filing notices required by the *Bankruptcy and Insolvency Act*, and,
 - d) Preparing and filing the Discharge Certificate.

Third Report, para 39.

26. The Receiver seeks an Order from the Court approving its activities and conduct described in the Third Report and upon the Receiver filing a Certificate with the Court confirming that it has completed the administration of these receivership proceedings, that Spergel be discharged and released from any and all liability that it has now 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.

Third Report, para 40.

PART III – ISSUES, LAW AND ARGUMENT

a) The Receiver's Activities Should be Approved

27. The Receiver's activities in these proceedings have been undertaken in furtherance of the Receiver's duties and are consistent with the Receiver's powers, as set out in the Appointment Order. The Receiver has acted reasonably and in the best interests of the Debtors' stakeholders, and this Court has the inherent jurisdiction to approve such activities.

Bank of America Canada v. Willann Investments Ltd. (1993) 20 C.B.R. (3d) 223 (ONSC), at paras. 3 and 4.

28. The request to approve a receiver's pre-filing report is not unusual and there are good policy and practical reasons for doing so. This applies in the context of a court appointed receiver.

[Target Canada Co. \(Re\), 2015 ONSC 7574, at paras 2 and 22.](#)

[Triple-I Capital Partners Limited v. 12411300 Canada Inc., 2023 ONSC 3400, at para 66.](#)

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

30. The Receiver therefore respectfully submits that the Third Report, and its activities to date as set out therein, should be approved by this Court.

b) The Interim Statement of Receipts and Disbursements, the Fees and Disbursements of the Receiver and its Counsel, and the Fee Accrual Should be Approved

31. The Receiver's Interim Statement of Receipts and Disbursements is appended to the Third Report, and are reasonable. The Receiver respectfully requests that such receipts and disbursements be approved by this Honourable Court.

32. The Receiver respectfully submits that the Professional Fees of the Receiver and the Receiver's counsel, as detailed in the Third Report, should be approved.

33. In determining whether to approve the fees of a receiver and its counsel, the Court should consider whether the remunerations and disbursements incurred in carrying out the receivership were 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 debtors;
- 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.

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

34. It is the Receiver's view that it and its counsel's fees and disbursements were incurred at the respective party's standard rates and charges, and are fair, reasonable and justified in the circumstances. Further, the fees and disbursements sought accurately

reflect the work done by the Receiver and by its counsel in connection with the receivership.

35. TD, as senior secured creditor of the Debtors, does not object to the fees.

c) The Proposed Distribution Should be Approved

36. It is well-established that priority among real property charges is governed by order of registration against title, subject to private arrangements to subordinate one interest to another.

[Land Titles Act, R.S.O. 1990, c. L.5, s. 78\(5\).](#)

37. As noted in the Security Opinion from Receiver's Counsel, based on the order of the registered charges against the Real Property, TD has a first priority charge against the Real Property, while 2412 has a second priority charge against the Real Property. The Receiver has received an opinion from its counsel that the security held by TD and 2412, subject to normal assumptions and qualifications, is valid and enforceable.

Third Report, para 31 and Appendix "14" thereto.

38. As noted above, the Receiver is seeking authorization of the Court to distribute the proceeds of sale of the Ballo Assets and the Real Property in accordance with the Proposed Distribution, after payment of the fees and disbursements of the Receiver and the Receiver's Counsel, including the Fee Accrual. It is anticipated that TD will suffer a shortfall with respect to the Ballo debt and that 2412 will suffer a shortfall on its mortgage debt, with no funds remaining for distribution to any other stakeholders.

Supplement to Third Report, para 5 and Appendix "1" thereto.

39. The Proposed Distribution will follow a priority scheme and is reasonable in the circumstances, and should be approved by the Court.

d) Abridging the Time for Service and Filing of the Motion Record

40. The Court may, by order, extend or abridge any time prescribed by the Rules on such terms as are just. Further, the Court may dispense with compliance with any Rule at any time where and as necessary in the interest of justice. Finally, the Court may

dispense with service where it is impractical to effect prompt service and/or it may validate service where it is satisfied that the document came to the notice of the person to be served.

[Rules 2.03, 3.02, 16.04 and 16.08, Rules of Civil Procedure, R.R.O. 1990, Reg. 194](#)

e) Discharge and Release of the Receiver Should be Approved

41. Pursuant to Rule 41.06 of the *Rules of Civil Procedure*, a receiver may be discharged only by the order of a judge.

Rules of Civil Procedure, R.R.O. 1990, Reg 194, [Rule 41.06.](#)

42. After the distribution of sale proceeds of the Ballo Assets and the Real Property, the Receiver will have substantially completed its mandate as contemplated by the Appointment Order and the *Bankruptcy and Insolvency Act*, and respectfully submits that it is appropriate to discharge the Receiver upon the filing of its Certificate.

43. The Receiver also seeks a release from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the act or omissions of the Receiver while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the part of the Receiver.

44. The Receiver submits that it is appropriate to grant a release in its favour. In *Pinnacle v. Kraus*, the Court granted an Order discharging and releasing a court-appointed receiver. In doing so, the Court noted that such a release is expressly contemplated by the Commercial List Model Discharge Order and, in the absence of improper or negligent conduct on the part of the Receiver, such releases should be granted.

Pinnacle v. Kraus, [2012 ONSC 6376 at para 47.](#)

45. Throughout these proceedings, the Receiver has acted prudently and the Receiver's activities have been thoroughly disclosed. Accordingly, the Receiver respectfully submits that the requested release is reasonable in the circumstances, will provide the Receiver with finality, and should be granted.

PART IV – ORDER REQUESTED

46. For the reasons set forth herein and in the Third Report, the Receiver respectfully requests that the Court grant the relief as set forth in the Notice of Motion and the related Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22th day of April, 2026.



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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Bank of America Canada v. Willann Investments Ltd.* (1993) 20 C.B.R. (3d) 223 (ONSC)
2. [*Target Canada Co. \(Re\)*, 2015 ONSC 7574 \(CanLII\)](#)
3. [*Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400 \(CanLII\)](#)
4. [*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 \(CanLII\)](#)
5. [*Pinnacle v. Kraus*, 2012 ONSC 6376](#)

**SCHEDULE "B"
RELEVANT STATUTES**

Rules of Civil Procedure, R.R.O. 1990, Reg. 194.

COURT MAY DISPENSE WITH COMPLIANCE

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

EXTENSIONS OR ABRIDGMENT

General Powers of Court

3.02(1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Times in Appeals

(3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court.

Consent in Writing

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by filing a consent.

SUBSTITUTED SERVICE OR DISPENSING WITH SERVICE

Where Order May be Made

16.04 (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may take an order for substituted service or, where necessary in the interest of justice, may dispense with service.

Effective Date of Service

(2) In an order for substituted service, the court shall specify when service in accordance with the order is effective.

(3) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules.

VALIDATING SERVICE

16.08 Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

(a) The document came to the notice of the person to be served; or

(b) The document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

DISCHARGE

41.06 A receiver may be discharged only by the order of a judge.

Land Titles Act, R.S.O. 1990, c. L.5

Priorities

- (5) Subject to any entry to the contrary in the register and subject to this Act, instruments registered in respect of or affecting the same estate or interest in the same parcel of registered land as between themselves rank according to the order in which they are entered in the register and not according to the order in which they were created, and, despite any express, implied or constructive notice, are entitled to priority according to the time of registration.

THE TORONTO-DOMINION BANK

Applicant

and

BALLO CARRIERS INC., et al.

Respondents

Court File No. CV-24-00003238-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BRAMPTON, ONTARIO

FACTUM OF THE RECEIVER

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