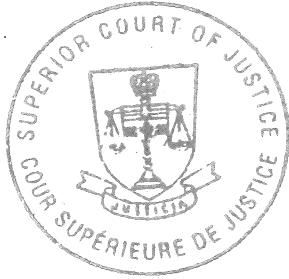


**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

1616292 ONTARIO LIMITED, 909413 ONTARIO LIMITED, RC INVESTMENTS INC.,  
NITI KHANNA, HENCO FINANCIAL INC., 2323583 ONTARIO INC.,  
and 2131774 ONTARIO INC.



Applicants

-and-

2541900 ONTARIO LTD.

Respondent

**NOTICE OF APPLICATION**

TO THE RESPONDENT(S)

SECTION 243 OF THE BA ACT  
SECTION 101 OF THE COURT OF JUSTICE ACT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing December 16, 2019, or as soon after that time as the motion may be heard, at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID

CV-19-00632527-00CL

MAY BE AVAILABLE TO YOU BY CONTACTING A LEGAL AID OFFICE.

Date: December 10<sup>th</sup>, 2019

Issued by:



Address of Superior Court of Justice  
Court office: 330 University Ave, 7<sup>th</sup> Floor  
Toronto, Ontario M5G 1E7

**Conrad Diamante**

TO THE SERVICE LIST

## SERVICE LIST

<b>TO:</b>	<p><b>Lax O'Sullivan Lissus Gottlieb LLP</b>  145 King St W, Suite 2750  Toronto , ON M5H 1J5</p> <p><b>Matthew Gottlieb</b>  Tel: 416-644-5353  Fax: 416-598-3730  Email: mgottlieb@lolg.ca</p> <p>Counsel to the Respondent</p>
<b>AND TO:</b>	<p><b>msi Spergel Inc., Licensed Insolvency Trustees</b>  505 Consumers Road, Suite 200 Toronto ON M2J 4V8</p> <p><b>Phillip Gennis</b>  Tel: 416-498-4325  Fax: 416-498-4325  Email: pgennis@spergel.ca</p>
<b>AND TO:</b>	<p><b>SimpsonWigle LAW LLP</b>  1006 Skyview Drive, Suite 103 Burlington, ON L7P 0V1</p> <p><b>Rosemary A. Fisher</b>  Tel: 905-639-1052  Fax: 905-528-9008  Email: fisherr@simpsonwigle.com</p> <p>Lawyers for msi Spergel Inc</p>
<b>AND TO:</b>	<p><b>LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP</b>  130 Adelaide Street W., Suite 2600 Toronto, ON M5H 3P5</p> <p><b>Tom Curry</b>  Tel: 416-865-3096  Fax: 416-865-9010  Email: <a href="mailto:tcurry@litigate.com">tcurry@litigate.com</a></p> <p>Counsel to CIBC</p>

AND TO:	<p>MILLER THOMSON 700-100 New Park Place Vaughan ON L4K 0H9</p> <p>Bobby Sachdeva Tel: 905-532-6670 Fax: 905-660-0139 Email: <a href="mailto:bsachdeva@millerthomson.ca">bsachdeva@millerthomson.ca</a></p> <p>Counsel to Gurchawan Bajwa</p>
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## APPLICATION

### 1. The Applicants make application for:

- (a) An order, substantially in the form attached to the Application Record at Tab 3, appointing Spergel Inc. (“**Spergel**”) as receiver (“**Receiver**”), without security, of all of the assets, undertakings and properties of 2541900 Ontario Ltd. (the “**Debtor**” or “**254**”) acquired for, or used in relation to a business carried on by the Debtor, and all proceeds thereof (collectively, the “**Property**”), including but not limited to the lands and premises listed in Schedule “B” (the “**Real Property**”).
- (b) such further and other relief as to this Honourable Court may seem just.

### 2. The grounds for the application are:

- (a) Pursuant to the order of Justice Hainey dated September 30, 2019, BDO Canada Limited was appointed as receiver (the “**CIBC Receivership Order**”) in the action CV-19-00628293-00CL (the “**CIBC Action**”). Sarbjit Dhillon (“**Sarbjit**”) and Mandhir Dhillon (“**Mandhir**”), the Officers/Directors of 254, are named defendants in the CIBC Action. 254 is not subject to the CIBC Receivership Order. That same day, Justice Hainey also granted a Mareva injunction order over the assets of the defendants in the CIBC Action (the “**Mareva Order**”). These orders were made without notice to the Applicants.
- (b) On October 7, 2019, Justice Hainey granted an order amending the Mareva Order to include 254, among other parties, as a corporation subject to the

Mareva Order (the “**Amended Mareva Order**”). As a result, 254 is currently restrained from selling, removing or dissipating any assets wherever situated.

- (c) On November 27, 2019, Justice Hainey granted a further order amending the Mareva Order to provide for a monthly transfer from deposit account held by 2561534 Ontario Inc. with Meridian (the “**Living Expenses Order**”). For greater certainty, the relief sought in this motion does not affect the payments to be made pursuant to the Living Expenses Order.
- (d) On December 4, 2019, Justice Hainey ordered that any mareva order motion materials be served and filed by December 9, 2019 and be returnable on December 16, 2019 (the “**Mareva and Receivership Order**”).

#### **Meridian's Debt and Security**

- (c) As of December 5, 2019, 254 was indebted to the Lenders in the amount of \$3,172,199.18 plus enforcement costs (the “**Indebtedness**”) pursuant to a credit agreement dated November 9, 2016 (the “**Credit Agreement**”) among the Lenders, as lender, 254, as borrower, and Sarbjit Singh Dhillon and Mandhir Singh Dhillon (collectively, the “**Guarantors**”). Pursuant to the Credit Agreement, the Indebtedness is repayable on demand upon the occurrence of an Act of Default as defined in the Credit Agreement.
- (d) 254’s obligation to repay the Indebtedness to Lender is secured by:
  - (i) a Charge/Mortgage in the principal amount of **\$3,070,000** registered in favour of the Applicants on November 14, 2016 as Instrument No. PR3026936 against the lands legally described as PIN 14209-1729 (LT) and PIN 14209-1730 (LT) and located at Queen Street, Brampton,

Ontario (the “**Property**”) in the land registry office of Peel (#43) (the “**LRO**”);

- (ii) a General assignment of rents and leases dated November 9, 2016 between 254 and Lender (the “**GAR**”);
  - (iii) a Notice of the GAR registered on November 14, 2016 as Instrument No. PR3026937 against the Property in the LRO; and
  - (iv) a General Security Agreement dated November 9, 2016 granted by 254 in favour of the Lenders, secured by a Personal Property Security Act (Ontario) registration registered on October 26, 2016 as Reference File No. 721886715 and acknowledged by an acknowledgement of receipt of PPSA financing statement dated October 26, 2016 and signed by 254, (collectively, the “**Security**”).
- (e) Under the terms and conditions of the paragraph 12 of Credit Agreement and Security, 254 agreed that the Applicants would have the right to seek the appointment of a Receiver upon the occurrence of an Act of Default.
- (f) Based on the available records, is not the only secured creditor of 254. All other secured creditor(s) have notice and/or consent to the relief sought.

### **Default and Enforcement**

- (g) Pursuant to the terms of the Credit Agreement and/or the Security, the following events of default have occurred:
- (i) Failure to make a required payment on September 30, 2019 in the amount of \$21,745.83, an event of default pursuant to the Credit Agreement, Schedule A, “Acts of Default”, paragraph 20.1.1;
  - (ii) Failure to make a payments when due on other charges affecting the Property, an event of default pursuant to the Credit Agreement, Schedule A, “Acts of Default”, paragraph 20.1.2;
  - (iii) becoming insolvent, committing an act of bankruptcy and/or having bankruptcy, insolvency and/or liquidation proceedings instituted by or against the Chargor, an event of default pursuant to the Credit Agreement, Schedule A, “Acts of Default”, paragraph 20.1.9;

- (iv) the CIBC Receivership Order;
  - (v) the Mareva Order;
  - (vi) the Amended Mareva Order; and
  - (vii) the Living Expenses Order,  
(collectively, the “**Acts of Default**”).
- (h) On December 5, 2019, the Applicants delivered a demand letter (the “**Demand Letter**”) and notice of its intention to enforce their security pursuant to section 244 of the BIA on 254. The Demand Letter demanded that 254 pay the full amount of the Indebtedness by no later than December 12, 2019. 254 has not cured the breach and all statutory requirements for the enforcement of Lender’s debt have been satisfied.
- (i) It is just and convenient to appoint Spergel as Receiver.
- (j) The immediate appointment of a receiver will provide necessary stability, transparency, and oversight to allow for an orderly sale of the Property that will benefit all of 254’s stakeholders.
- (k) Spergel is a licensed trustee in bankruptcy, and has consented to act as Receiver should the Court so appoint it.
- (l) The provisions of the BIA, including Section 243;
- (m) Section 101 of the CJA;
- (n) Rules 1.04, 3.02, 16.08, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, C. C.43; and



(o) Such further and other grounds as the lawyers may advise.

3. **The following documentary evidence** will be used at the hearing of the application:

(a) The affidavit of Neil Pahuja sworn December 9<sup>th</sup>, 2019;

(b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

Date: December 9<sup>th</sup>, 2019

10<sup>th</sup>

**HIMELFARB PROSZANSKI**

Barristers & Solicitors  
480 University Avenue  
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Toronto, ON M5G 1V2

**Tom Arndt (43417K)**

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[tom@himprolaw.com](mailto:tom@himprolaw.com)

Lawyers for the Applicants

1616292 ONTARIO LIMITED et. al.  
Applicants

-and- 2541900 ONTARIO LTD.  
Respondent

Court File No.: CV-19-00632527-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

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**NOTICE OF APPLICATION**

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