

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST



THE HONOURABLE MR.)

FRIDAY, THE 21ST

JUSTICE PENNY)

DAY OF SEPTEMBER, 2018

CWB MAXIUM FINANCIAL INC.

Plaintiff

- and -

1970636 ONTARIO LTD. o/a MT. CROSS PHARMACY,
UMAIR N. NASIM, SHRIKANT MALHOTRA, 1975193 Ontario dba MTN RX &
HEALTH AND ANGELO KIRKOPOULOS

Defendants

ORDER
(Appointing Receiver and Guarantor Disclosure)

THIS MOTION made by the Plaintiff for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel inc. ("Spergel") as receiver (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of Umair N. Nasim and Shrikant Malhotra (collectively, the "Guarantors"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Daniel Gilchrist sworn June 22, 2018 and the Exhibits thereto, the responding affidavits of Shrikant Malholtra sworn July 5, 2018 and August 20, 2018, and on hearing the submissions of counsel for the Plaintiff, the Defendant Shrikant Malholtra and Umair N. Nasim, appearing in person, no one else attending although duly served as appears

from the affidavit of service of Maureen McLaren sworn June 29, 2018 and on reading the consent of Spergel to act as the Receiver,

APPOINTMENT

1. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Spergel is hereby appointed Receiver, without security, and only with the powers granted below, of all of the assets, undertakings and properties of the Guarantors, including all proceeds thereof (the "**Property**") for the purposes of investigation and inspection.

RECEIVER NOT IN POSSESSION OF THE ASSETS

2. THIS COURT ORDERS that the Receiver shall not take possession of the Property without further Order of the Court.

RESTRAINT ON PROPERTY

3. THIS COURT ORDERS that the Guarantors are restrained from transferring, selling, mortgaging, encumbering or otherwise diverting or disposing of any Property.

4. THIS COURT ORDERS that the Guarantors may utilize their Property for ordinary course living expenses.

DISPENSING WITH NOTICES UNDER THE BIA

5. THIS COURT ORDERS that the Receiver be and hereby relieved from compliance with the provisions of s. 245 and 246, provided that the Receiver shall provide notice of its appointment by way of a copy of this Order to the Guarantors and to the Superintendent of Bankruptcy, accompanied by the prescribed fee.

PROVISION OF INFORMATION

6. THIS COURT ORDERS that the Guarantors shall:

- (a) provide a sworn statement of all of their assets, liabilities, income and expenses (“**Sworn Statement**”) by no later than October 12, 2018. The Sworn Statement shall be prepared as at September 20, 2018 and the date before October 12, 2018 on which it is sworn;
- (b) grant access to the Receiver to all of their financial information and documentation in respect to their respective Property, including a hard copy and electronic. This access must be granted so as to permit the Receiver to have completed its review by November 12, 2018. This includes, but is not limited to:
 - (i) income;
 - (ii) expenses;
 - (iii) tax returns;
 - (iv) bank accounts; and
 - (v) credit card statements;
- (c) attend for an examination under oath by the Receiver by no later than December 12, 2018, if requested by the Receiver.

7. THIS COURT ORDERS that the Receiver shall deliver to the Guarantors, the Plaintiff and the Court a report (the “**Report**”) on its actions pursuant to this order by no later than January 11, 2019.

8. THIS COURT ORDERS that the parties may attend as necessary at a 9:30 am appointment to vary this timetable or for further directions.

9. THIS COURT ORDERS that this order is without prejudice to the Receiver returning to Court based on what it learns or other developments, to vary or expand the scope of its appointment.

10. THIS COURT ORDERS that the issue of the Receiver’s fees shall be addressed at the return of this Motion which shall be scheduled following delivery of the Report.

11. THIS COURT ORDERS that costs of this Motion are reserved to the return of the Motion.

12. THIS COURT ORDERS that the Receiver shall be permitted to register this order against title to any real property assets of the Guarantors.

NO PROCEEDINGS AGAINST THE RECEIVER

13. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Guarantors shall remain the employees of the Guarantors. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

SERVICE AND NOTICE

17. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that the Receiver shall post documents in respect to these proceedings on the Case Website, bearing the URL 'www.spergel.ca/mtcross', previously be established in accordance with the Protocol pursuant to the Order of Mr. Justice Dunphy dated May 16, 2018 .

18. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to other interested parties at their respective addresses as last shown on the records of the Receiver and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

19. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

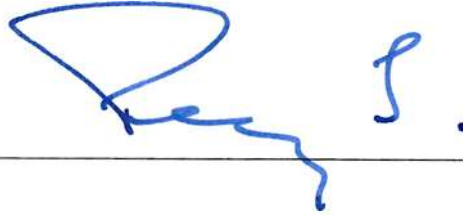
20. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Guarantors.

21. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

22. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

23. THIS COURT ORDERS that the Receiver, its counsel and counsel for the Plaintiff are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by

forwarding true copies thereof by electronic message to other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 27 2018

PER / PAR:



CWB MAXIUM FINANCIAL
SERVICES INC.
Plaintiff

and 1970636 ONTARIO LTD. o/a MT. CROSS
PHARMACY et al.
Defendants

Court File No.: CV-18-597922-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at TORONTO

ORDER
(APPOINTING RECEIVER AND GUARANTOR DISCLOSURE)

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