



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00702043-00CL

DATE: MAY 15, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: ROYAL BANK OF CANADA v. 2668144 ONTARIO INC. et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Rachel Moses	Royal Bank of Canada	Rachel.moses@ca.gowlingwlg.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
No Appearance	2668144 Ontario Inc.	

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Tim Hogan	Counsel for the Receiver, MSI Spergel Inc.	thogan@harrisonpensa.com
Mukul Manchanda	Receiver, MSI Spergel Inc.	mmanchanda@spergel.ca

ENDORSEMENT OF JUSTICE KIMMEL:

The Receiver's Motion

- [1] msi Spergel inc. ("Spergel"), in its capacity as court-appointed Receiver (the "Receiver"), appointed pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated August 4, 2024 (the "Appointment Order") of the Property (as defined in the Appointment Order) of the Defendant, of 2668144 Ontario Inc. (the "Debtor") seeks to be discharged, in conjunction with the approval of its Second Report dated May 5, 2025 and its activities, fees and statement of receipts and disbursements described therein, the approval of the fees of its counsel and various ancillary relief.
- [2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Receiver's factum filed on this motion, dated May 8, 2025.
- [3] The Real Property, the only asset in the receivership, is a former gas station that is environmentally contaminated, and the Receiver and the Ministry of the Environment, Conservation and Parks ("MECP") are concerned as to the possible migration of contaminants onto an adjoining municipal roadway and neighbouring private land.
- [4] The Receiver was authorized, but not obligated, to sell the Real Property. The Receiver has determined that due to the Remediation Costs and the Work Orders, the uncertainty of marketing a real property that is contaminated, and the absence of resources to cover said marketing, that it is appropriate to seek its discharge. RBC supports the Receiver's discharge.
- [5] RBC, as senior (and the only) secured creditor of the Debtor, has advised that arrangements are in place for RBC to sell and assign the security it holds from the Debtor and over the Real Property. As the Real Property was the only asset subject to the Appointment Order, there is nothing further for the Receiver to administer with respect to the Debtor's estate. No claims have been filed with the Receiver by Canada Revenue Agency. The debtor had no employees at the date of the Receivership Order. On the discharge of the Receiver, the receivership administration will end, and the holder of the RBC security will then have rights to deal with the Real Property.
- [6] There is no opposition to the requested order.

Approval of Receiver's Report and Fees and Activities

- [7] All of the Receiver's activities set out in its Second Report dated May 5, 2025 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. They were undertaken in furtherance of the Receiver's duties and are consistent with the Receiver's powers, as set out in the Appointment Order.

- [8] The approval of the Second Report and the activities of the Receiver described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders. The statement of receipts and disbursements appears to be in order.
- [9] It has become the practice of the court to periodically approve the activities of its court appointed officers to ensure that their activities are being conducted in a prudent and diligent manner, and it is within the court's inherent jurisdiction to do so: see *Target Canada Co. (Re)*, 2015 ONSC 7574, at para. 23.
- [10] The current fees and disbursements of Spergel, in its capacity as Receiver, for the period to and including February 28, 2025, inclusive of HST, are \$40,551.63 as detailed in the Second Report in relation to the Debtor.
- [11] The current fees and disbursements of Harrison Pensa LLP, as counsel for the Receiver, for the period up to and including May 1, 2025, including HST and disbursements, are \$21,224.70.
- [12] The Receiver recommends that a Fee Accrual not exceeding the sum of \$75,000.00 (including taxes and disbursements), should be held for the final fees and expenses of the Receiver and the Receivers counsel to complete the Receivership, including the discharge of the Receiver.
- [13] The professional fees claimed for the Receiver and its counsel are supported by affidavits and reflect the work that has been done, and reasonable estimates of work to be completed until its discharge. The fees are commensurate with the tasks performed and the Receiver considers the fees and hourly rates to be reasonable. I find them to be fair, reasonable and justified in the circumstances and having regard to relevant factors. See *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras 33 and 44-45.
- [14] The Receiver believes that the Fee Accrual is sufficient and necessary to cover its fees and the fees of its counsel to the completion of these proceedings, and it is approved on the basis of that recommendation.
- [15] On completion of the remaining activities as detailed in the Second Report and filing the Discharge Certificate, the Receiver will have substantially completed its mandate as contemplated by the Appointment Order, and under the *Bankruptcy and Insolvency Act*.
- [16] To avoid the costs of making a further motion to the court to obtain the Receiver's discharge, the Receiver seeks an order now for it to be discharged upon the filing by the Receiver of a Discharge Certificate confirming that the Receiver has completed its remaining duties. This is appropriate in the circumstances.

- [17] The proposed release of the Receiver included in the order mirrors the language used in the Commercial List model discharge order. As Pattillo J. observed: "in the absence of any evidence of improper or negligence conduct, the release should issue": See *Pinnacle Capital Resources Ltd. v. Kraus Inc.*, 2012 CarswellOnt. 14138 (ONSC), at para 47, As in *Kraus*, there is no such evidence in this case.
- [18] The release of the Receiver provided for upon its discharge appropriately excludes gross negligence and willful misconduct, as is the practice of this court for these release orders.

Discharge Order

- [19] The Discharge Order may issue in the form signed by me today.

A handwritten signature in black ink, appearing to read "Kimmel J.", written in a cursive style.

KIMMEL J.