

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 2nd
JUSTICE OSBORNE) DAY OF APRIL, 2024

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

- and -

1000179473 ONTARIO INC. and 2724393 ONTARIO INC.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by MNP Ltd. in its capacity as the Court-appointed receiver (the “**Receiver**”) without security of the assets, undertaking, and property of 10001794393 Ontario Inc. (“**1000 Corp.**”) and 2724393 Ontario Inc. (“**272 Corp.**”, together with 1000 Corp, the “**Companies**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale (the “**Sale Agreement**”), between the Receiver and 15678072 Canada Inc. (the “**Purchaser**”) dated February 12, 2024 and appended as a Confidential Appendix to the Second Report of the Receiver dated March 19, 2024 (the “**Second Report**”), and vesting in the Purchaser 272 Corp’s right, title and interest in and to the lands and premises located 181 Brant Road, St. George, Ontario and legally described in Schedule “A” hereto (the “**Real Property**”), was heard this day by video conference.

ON READING the Second Report, and on hearing the submissions of counsel for the Receiver, and such other parties shown on the Participant Information Form filed with the Court:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Real Property to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "B" hereto (the "**Receiver's Certificate**"), the Real Property shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Steele dated July 21, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Real Property are hereby expunged and discharged as against the Real Property.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Brant No. 2 of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Encumbrances listed in Schedule "C" hereto.

4. **THIS COURT ORDERS** that the Receiver or Purchaser with the prior written consent of the Receiver shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Real Property shall stand in the place and stead of the Real Property, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Real Property with the same priority as they had with respect to the Real Property immediately prior to the sale, as if the Real Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 272 Corp and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 272 Corp;

the vesting of the Real Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 272 Corp and shall not be void or voidable by creditors of 272 Corp, nor shall it constitute nor be deemed to be a fraudulent

preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to distribute the net sale proceeds of the Transaction to Canadian Western Bank less a holdback for priority payables and for the fees and expenses of the Receiver and its legal counsel, Chaitons LLP (“Chaitons”) as set out in the Second Report.

9. **THIS COURT ORDERS** that, in addition to all of the powers of the Receiver pursuant to the Appointment Order (as defined in the Second Report), the Receiver is hereby expressly empowered and authorized to do the following:

- (a) to file an assignment in bankruptcy on behalf of 272 Corp pursuant to the Bankruptcy and Insolvency Act; and
- (b) to act as Trustee in Bankruptcy in relation to the bankruptcy of 272 Corp.

10. **THIS COURT ORDERS** that the activities of the Receiver as set out in the Second Report are hereby approved; 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 such approval.

11. **THIS COURT ORDERS** that the interim statement of receipts and disbursements for the period ended March 1, 2024 be and is hereby approved.

12. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and Chaitons as set out in the Second Report, the affidavit of Jerry Henechowicz sworn March 15, 2024 and the affidavit of Veronica Cesario sworn March 19, 2024, are hereby approved.

13. **THIS COURT ORDERS** that the Confidential Appendices to the Second Report shall be sealed and not form part of the public report until completion of the Transaction or further order of this Court.

14. **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.

Schedule "A" – Real Property

<i>PIN</i>	32037 - 0039 (LT)
<i>Description</i>	PT LT 13, CON 2, SOUTH DUMFRIES, AS IN A412953; ; SOUTH DUMFRIES
<i>Address</i>	181 Brant Road, St. George, Ontario

Schedule “B” – Form of Receiver’s Certificate

Court File No. CV-23-00702801-00CL

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B E T W E E N:

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- and -

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Steele of the Ontario Superior Court of Justice (the “**Court**”) dated July 21, 2023, MNP Ltd. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of 10001794393 Ontario Inc. (“**1000 Corp.**”) and 2724393 Ontario Inc. (“**272 Corp.**”, together with 1000 Corp, the “**Companies**”).

B. Pursuant to an Order of the Court dated April •, 2024 (“**Approval and Vesting Order**”), the Court approved the Agreement of Purchase and Sale dated February 12, 2024 (the “**Sale Agreement**”) between the Receiver and 15678072 Canada Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of Corp’s right, title and interest in and to the Real Property, which vesting is to be effective with respect to the Real Property upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Real Property; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Real Property payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on • _____, 2024.

MNP LTD., solely in its capacity as Court-Appointed Receiver of 10001794393 Ontario Inc. and 2724393 Ontario Inc. and not in its personal capacity

Per: _____
Name:
Title:

Schedule “C” – Encumbrances to be deleted and expunged from title to Real Property

No.	Registration No.	Registration Date	Instrument Type	Parties From	Parties To
1.	BC367166	2019/10/11	Notice of Lease	Parkland Fuel Corporation	
2.	BC376951	2020/03/26	Transfer	2658293 Ontario Inc.	2724393 Ontario Inc.
3.	BC448505	2023/02/14	Charge	2724393 Ontario Inc.	Singh, Balwinder Walia, Bikramjit Walia, Iqbal Singh
4.	BC453264	2023/05/18	Charge	2724393 Ontario Inc.	Canadian Western Bank
5.	BC453265	2023/05/18	No Assgn Rent Gen	2724393 Ontario Inc.	Canadian Western Bank
6.	BC453266	2023/05/18	Postponement	Singh, Balwinder Walia, Bikramjit Walia, Iqbal Singh	Canadian Western Bank
7.	BC453539	2023/05/25	Charge	2724393 Ontario Inc.	1407659 Ontario Inc. Calicom Solutions Inc. Goldstein, David Kettner, Miles Mark J. Shiner Professional Corporation Key, Ken Garshowitz, Hartley

No.	Registration No.	Registration Date	Instrument Type	Parties From	Parties To
8.	BC453540	2019/08/29	No Assn Rent Gen	2724393 Ontario Inc.	1407659 Ontario Inc. Calicom Solutions Inc. Goldstein, David Kettner, Miles Mark J. Shiner Professional Corporation Key, Ken Garshowitz, Hartley
9.	BC453542	2019/08/29	Postponement	Singh, Balwinder Walia, Bikramjit Walia, Iqbal Singh	1407659 Ontario Inc. Calicom Solutions Inc. Goldstein, David Kettner, Miles Mark J. Shiner Professional Corporation Key, Ken Garshowitz, Hartley
10.	BC457995	2020/09/18	Apl Court Order	Ontario Superior Court of Justice – Commercial List	MNP Ltd.

**Schedule “D” – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Any reservations, restrictions, rights of way, easements or covenants that run with the land;
2. Any registered agreements with a municipality, region or supplier of utility service including, without limitations, electricity, water, sewage, gas, telephone or cable television or other telecommunication services;
3. All laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Property;
4. Any minor easements for the supply of utility services or other services to the Lands or Buildings, if any, or adjacent properties;
5. Encroachments disclosed by any error or omission in existing surveys of the Lands or neighbouring properties and any title defects, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Lands and survey of the Lands and survey matters generally;
6. The exceptions and qualifications set forth in the *Registry Act* (Ontario) or the *Land Titles Act* (Ontario), or amendments thereto;
7. Any reservation(s) contained in the original grant from Crown;
8. Subsection 44(1) of the *Land Titles Act* (Ontario) except paragraphs 11 and 14.
9. Provincial succession duties and escheats or forfeiture to the Crown;
10. The rights of any person who would, but for the *Land Titles Act* (Ontario) be entitled to the Lands or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention; and
11. Any lease to which subsection 70(2) of the *Registry Act* (Ontario) applies.

CANADIAN WESTERN BANK

-and- **1000179473 ONTARIO INC. et al.**

Applicant

Respondents

Court File No. CV-23-00702801-00CL

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PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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**Lawyers for MNP Ltd., in its capacity as Court-Appointed
Receiver**