

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.) TUESDAY, THE 8TH DAY
JUSTICE HAINEY) OF SEPTEMBER, 2020

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

1254044 ONTARIO LIMITED, 2431264 ONTARIO INC., 2189788 ONTARIO INC., 1552838 ONTARIO INC., 1786675 ONTARIO LIMITED, 2034039 ONTARIO INC., 2660556 ONTARIO LIMITED, 2541899 ONTARIO LIMITED and 2542372 ONTARIO INC.

Respondents

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

APPROVAL AND VESTING ORDER

THIS MOTION, made by MNP Ltd. in its capacity as the Court-appointed receiver (the "Receiver") of the assets, undertakings, and properties of 1254044 Ontario Limited, 2431264 Ontario Inc., 2189788 Ontario Inc., 1552838 Ontario Inc., 1786675 Ontario Limited, 2034039 Ontario Inc., 2660556 Ontario Limited, 2541899 Ontario Limited, and 2542372 Ontario Inc. (2542372 Ontario Inc. is hereafter referred to as the "Debtor"), for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Tanveer Pahal (the "Purchaser") dated June 10, 2020 and appended as appendix A in the confidential supplement to the Third Report of the Receiver dated August 14, 2020 (the "Third Report"), and vesting in the Purchaser, or as the Purchaser may direct, the Debtor's right, title and interest, if any, in and to the assets described in the Sale

Agreement (the "Purchased Assets"), was heard this day via judicial videoconference due to the Covid-19 pandemic .

ON READING the Third Report and the confidential supplement to the Third Report and on hearing the submissions of counsel for the Receiver and such other persons as may be present, no one appearing for any other person on the service list, although properly served as appears from the affidavits of Julie Franchini sworn August 18, 2020 and Laurie Marshall sworn August 17, 2020, filed:

1. THIS COURT ORDERS that this motion be heard by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 pandemic;
2. THIS COURT ORDERS that the time for and method of service of the notice of motion and the motion record, including the Third Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof;
3. 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 Purchased Assets to the Purchaser.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtors' right, title and interest, if any, in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, or as the Purchaser may direct, 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 Hailey dated October 16, 2019, as amended; and (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; (all

of which are collectively referred to as the "Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, 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 Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets 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 the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, 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 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.

9. THIS COURT ORDERS that the Third Report and the activities and conduct of the Receiver described in the Third Report be and are hereby approved;

10. THIS COURT ORDERS that the Confidential Supplement shall be sealed until the earlier of a) the completion of the Transaction, and b) further order of this Court; and

11. THIS COURT ORDERS that, notwithstanding Rule 59.05, this order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.


Justice, Ontario Superior Court of Justice

Schedule A – Form of Receiver’s Certificate

Court File No. CV-19-00629058-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**1254044 ONTARIO LIMITED, 2431264 ONTARIO INC., 2189788 ONTARIO INC., 1552838
ONTARIO INC., 1786675 ONTARIO LIMITED, 2034039 ONTARIO INC., 2660556 ONTARIO
LIMITED, 2541899 ONTARIO LIMITED and 2542372 ONTARIO INC.**

Respondents

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3,
and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "Court") dated October 16, 2019, as amended, MNP Ltd. was appointed as the receiver (the "Receiver") of the assets, undertakings and properties of 1254044 Ontario Limited, 2431264 Ontario Inc., 2189788 Ontario Inc., 1552838 Ontario Inc., 1786675 Ontario Limited, 2034039 Ontario Inc., 2660556 Ontario Limited, 2541899 Ontario Limited, and 2542372 Ontario Inc. ("2542372 Ontario Inc. is hereafter referred to as the "Debtor").

B. Pursuant to an Order of the Court dated September 8, 2020, the Court approved the agreement of purchase and sale made as of June 10, 2020 (the "Sale Agreement") between the Receiver and Tanveer Pahal (the "Purchaser") and provided for the vesting in the Purchaser, or as the Purchaser may direct, of the Debtor's right, title and interest, if any, in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets 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 Purchased Assets; (ii) that the conditions to Closing as set out in Article 4 of 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 Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 4 of 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 _____ [TIME] on _____ [DATE].

MNP LTD., in its capacity as Receiver of the assets, undertakings and properties of 1254044 Ontario Limited, 2431264 Ontario Inc., 2189788 Ontario Inc., 1552838 Ontario Inc., 1786675 Ontario Limited, 2034039 Ontario Inc., 2660556 Ontario Limited, 2541899 Ontario Limited, and 2542372 Ontario Inc. and not in its personal capacity

Per: _____

Name: Rob Smith

Title: Senior Vice-Principal

Schedule B – Purchased Assets

1. The lease dated February 10, 2017 made between 2145744 Ontario Ltd., as landlord, and 2542372 Ontario Inc., as tenant, for the Burger King restaurant premises operated by 2542372 Ontario Inc. from 203 Indian Road, Sarnia (the “Leased Premises”);
2. The following chattels and equipment (the “Chattels”) situate in the Leased Premises:
 - 1 TFI Equipment soft serve ice cream machine
 - 3 mini fridges.
 - 1 Pitco 3 compartment deep fryer
 - 2 Prince Castle bread toasters
 - 1 English muffin toaster
 - 1 Silver King meat well
 - 1 fry freezer
 - 1 fry holding station
 - 1 fry caddy
 - 1 Nieco meat broiler
 - 1 coffee machine
 - 10 chairs
 - 8 table
 - 1 ice machine
 - 1 soft drink beverage station
3. All inventories of every kind and nature located on the Leased Premises pertaining to the Burger King restaurant business, including all restaurant supplies, food and foodstuffs;
4. All warranties, warranty rights, performance bonds and indemnities (implied express or otherwise) of 2542372 Ontario Inc. against manufacturers, contractors or any other Person in respect of the Leased Premises or the Chattels, but only to the extent that same are capable of being assigned; and

5. The Assumed Contracts (as defined in the Sale Agreement).

BANK OF MONTREAL

and

1254044 ONTARIO LIMITED, 2431264 ONTARIO INC.,
2189788 ONTARIO INC., 1552838 ONTARIO INC.,
1786675 ONTARIO LIMITED, 2034039 ONTARIO INC.,
2660556 ONTARIO LIMITED, 2541899 ONTARIO LIMITED
and 2542372 ONTARIO INC.

Court File No. CV-19-00629058-00CL

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER

MILLER THOMSON LLP

One London Place
255 Queens Avenue, Suite 2010
London, ON Canada N6A 5R8

Tony Van Klink LSO#: 29008M
tvanklink@millerthomson.com
Tel: 519.931.3509
Fax: 519.858.8511

Lawyers for MNP Ltd., the Court-appointed
Receiver of the assets, undertakings and
properties of 1254044 Ontario Limited, 2431264
Ontario Inc., 2189788 Ontario Inc., 1552838
Ontario Inc., 1786675 Ontario Limited, 2034039
Ontario Inc., 2660556 Ontario Limited, 2541899
Ontario Limited, and 2542372 Ontario Inc.