

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended

MOTION RECORD

January 29, 2020

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Haddon Murray (LSO# 61640P)
Tel: (416) 862-3604
Fax: (416) 862-7661
Email: haddon.murray@gowlingwlg.com

Lawyers for the Applicant,
Canadian Imperial Bank of Commerce

TO: **THE SERVICE LIST**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

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- and -

NAUSS PLUMBING & HEATING INC.

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Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

**NOTICE OF MOTION
TO ENFORCE SETTLEMENT**

The Applicant, Canadian Imperial Bank of Commerce, will make a Motion to a Judge on the 21st day of February 2020 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 155 Elm Street, Sudbury, Ontario, P3C 1T9.

PROPOSED METHOD OF HEARING: The Motion is to be heard:

- in writing under subrule 37.12.1(1);
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

- (a) An Order pursuant to a settlement agreement and consent dated November 28, 2019, appointing MNP Ltd. (“**MNP**”) as receiver and manager (“**Receiver**”) over the assets, undertakings and properties (“**Property**”) of the Respondent, Nauss Plumbing & Heating Inc.;
- (b) In the alternative, that the application to appoint the Receiver be heard on its merits together with this motion;
- (c) The costs of this Motion on a substantial indemnity basis; and,
- (d) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (e) The notice of application was filed on November 19, 2019;
- (f) The hearing for the application was scheduled for November 29, 2019;
- (g) On November 28, 2019, the parties entered into a settlement agreement (the “**Settlement Agreement**”) whereby:
 - (i) the Applicant consented to the adjournment of the hearing until January 10, 2020; and
 - (ii) the Respondent consented to the appointment of MNP as Receiver at the hearing rescheduled on January 10, 2020 unless it fully repaid its indebtedness to the Applicant or provided a commitment letter to for financing of the indebtedness by the same date.

- (h) On January 9, 2020, counsel for the Respondent consented to the form and content of a draft order appointing MNP as Receiver over the Property in accordance with the terms of the Settlement Agreement;
- (i) By January 10, 2020, the Respondent did not provide the Applicant with full repayment of the indebtedness to the Applicant or a commitment letter for financing of the indebtedness as per the terms of the Settlement Agreement;
- (j) At 9:27 a.m. on January 10, 2020, the Respondent advised counsel to the Applicant he would seek further adjournment of the matter, notwithstanding the consent;
- (k) At the hearing on January 10, 2020, Justice Cornell ordered that the application was adjourned *sine die* to permit a motion to be brought to enforce the alleged Settlement Agreement; and
- (l) The Applicants seek to enforce of the Settlement Agreement for the appointment of the Receiver on consent. In the alternative, the Applicants seek the return of the Application, and rely on the grounds set out in the Notice of Application found at tab 1 to the Application Record of the Applicant dated November 19, 2019.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (m) The Affidavit of Heather Fisher, to be sworn;

- (n) The Affidavit of Sieg Flatt sworn November 19, 2019, found a tab 2 of the Application Record of the Applicant dated November 19, 2019;
- (o) The Supplemental Affidavit of Sieg Flatt sworn November 25, 2019, found at tab 1 to the Supplemental Application Record of the Applicant dated November 25, 2019; and
- (p) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 20, 2020

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
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100 King Street West, Suite 1600
Toronto ON M5X 1G5

Haddon Murray (LSO# 61640P)
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Fax: (416) 862-7661
Email: haddon.murray@gowlingwlg.com

Lawyers for the Applicant

TO: **THE SERVICE LIST**

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

Court File No. CV-19-00008866-0000
NAUSS PLUMBING & HEATING INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
SUDBURY

**NOTICE OF MOTION TO ENFORCE SETTLEMENT
AGREEMENT**

GOWLING WLG (CANADA) LLP

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Email: haddon.murray@gowlingwlg.com

Lawyers for the Applicant

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended

**AFFIDAVIT OF HEATHER FISHER
(Sworn January 29, 2020)**

I, Heather Fisher, of the City of Toronto, in the Province of Ontario, **MAKE OATH**

AND SAY:

1. I am an Associate at Gowling WLG (Canada) LLP, counsel for the Applicant, Canadian Imperial Bank of Commerce ("**CIBC**"). As such, I have personal knowledge of the matters contained in this Affidavit. Where I do not have personal knowledge, I have stated the source of my information and believe the information to be true.

2. On November 19, 2019, CIBC commenced an application to appoint MNP Ltd. ("**MNP**") as receiver and manager ("**Receiver**") over the assets, undertakings and

-2-

properties (collectively, the “**Property**”) of Nauss Plumbing & Heating Inc. (the “**Receivership Application**”). A copy of the notice of application dated November 19, 2019 is attached as **Exhibit “A”**.

3. The Receivership Application was scheduled to be heard on November 29, 2019.

4. On November 28, 2019, counsel for the parties negotiated a settlement regarding the Receivership Application. The terms of the settlement were memorialized in an email dated November 28, 2019 (9:53AM) from Haddon Murray, counsel for the Applicant, to Robert LeBlanc, counsel for the Respondent (the “**Settlement Agreement**”). Counsel for the Respondent confirmed the terms of the Settlement Agreement the same day at 10:17AM. A copy of the email correspondence containing the Settlement Agreement is attached as **Exhibit “B”**.

5. The terms of the Settlement Agreement included:

(a) the Applicant consented to the adjournment of the hearing until January 10, 2020; and

(b) the Respondent consented to the appointment of MNP as Receiver at the Receivership Application hearing rescheduled for January 10, 2020 unless the Respondent fully repaid its indebtedness to the Applicant or provided a commitment letter to refinance the indebtedness prior to January 10, 2020. Any commitment letter was required to: (i) be legally binding, (ii)

-3-

have no conditions precedent, and (iii) be from a lender that is acceptable to the Applicant at its sole discretion.

6. Pursuant to the terms of the Settlement Agreement, the parties agreed to adjourn the Receivership Application, then scheduled to be heard on November 29, 2019, on consent. Counsel for the Respondent was to adjourn the matter to January 10, 2020.

7. On January 6, 2020, I called the court to confirm the Receivership Application was scheduled to be heard January 10, 2020 and discovered counsel for the Respondent had not properly adjourned the matter. However, all counsel agreed that it was the parties' intention to proceed with the consent Receivership Application on January 10, 2020 and that I would attend on January 10, 2020 to walk up the consent order.

8. On January 6, 2020, Mr. Murray emailed Mr. Leblanc, copying me, to provide him with draft correspondence that was to be sent to the Sudbury court staff confirming the parties' intention to proceed with the consent order on January 10, 2020. Counsel for the Respondent confirmed the contents of the email were accurate. A copy of the email correspondence and attachments sent to the court are attached as **Exhibit "C"**.

9. On January 9, 2020, counsel for the Respondent consented to the form and content of a draft order appointing MNP as Receiver over the Property in accordance with the terms of the Settlement Agreement. A copy of the draft order and the January

9, 2020 email correspondence consenting to the draft order are attached as **Exhibits “D”** and **“E”**, respectively.

10. On January 10, 2020 at 9:27AM, Collette Lauzon, legal assistant to counsel for the Respondent, sent an email on behalf of counsel for the Respondent to Mr. Murray and copying me. The email advised counsel for the Applicant that, notwithstanding that the Respondent had previously consented to the Receivership Application, counsel for the Respondent had received instructions to ask for a further adjournment of the matter to try to finalize the sale of a subset of the Respondent’s properties. The email attached a series of email correspondence and documents related to the Respondent’s attempts to sell the subset of properties. The January 10, 2020 (9:27AM) email and attachment (collectively, the **“January 10 Email”**) are attached as **Exhibit “F”**. The January 10 Email has been redacted as a result of an inadvertent waiver of privilege.

11. At no time did the Respondent provide the Applicant with full repayment of the indebtedness or a commitment letter to refinance the indebtedness that satisfied the terms of the Settlement Agreement – nor has any payment of the indebtedness or refinancing occurred since the January 10 hearing date.

12. I attended at the Sudbury Superior Court on January 10, 2020 to speak to the Receivership Application. Counsel for the Respondent also attended and sought an adjournment of the matter on the basis that the Respondent required an adjournment to put recent developments before the court. The Applicant’s position was that the parties had a binding settlement agreement. Justice Cornell adjourned the Receivership Application *sine die* to permit the Applicant to bring a motion to enforce the alleged

Settlement Agreement. A copy of the endorsement of Justice Cornell dated January 10, 2020 is attached as **Exhibit "G"**.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on January 29, 2020.



Commissioner for Taking Affidavits
(or as may be)



HEATHER FISHER

**Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.**

This is Exhibit "A" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

**Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The claim made by the Applicant is set out on the following pages.

THIS APPLICATION will come on for a hearing on November 29, 2019 at 9:30 a.m., or as soon thereafter as the application can be heard, at the Courthouse located at 155 Elm Street, Sudbury, 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 38C 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 not later than 2:00 p.m. on the day 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 MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: November ^{19th} 18, 2019

Issued by 
Local Registrar

Address of Court Office:
330 University Avenue
Toronto, Ontario, Canada

TO: THE SERVICE LIST

1. **THE APPLICANT, MAKES APPLICATION FOR, *inter alia*:**
 - (a) An Order substantially in the form of Order attached at Tab 3 of the Application Record appointing MNP Ltd. as the receiver and manager (the “**Receiver**”), without security, of the assets, undertakings and property (collectively, the “**Property**”) of Nauss Plumbing & Heating Inc. (“**Nauss**”) pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1986, c B-3, as amended (the “**BIA**”) and Section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended (the “**CJA**”); and
 - (b) Such further and other relief as may be just and equitable.

2. **THE GROUNDS FOR THE APPLICATION ARE:**
 - (a) Nauss holds title to the following properties in northern Ontario (listed below by their respective municipal addresses):
 - (i) 25690 Lasalle Boulevard, Sudbury, Ontario (the “**Sudbury Property**”);
 - (ii) 551 Centre Street in Espanola, Ontario (the “**Espanola Property**”);
 - (iii) 7 Millichamp Street, in Markstay, Ontario (the “**Markstay Millichamp Property**”); and
 - (iv) 1330 North Road, in Markstay Ontario (the “**Markstay North Road Property**” together with the Sudbury Property, the Espanola Property and the Markstay Millichamp Property, the “**Real Property**”);
 - (b) All of the Real Property is used by Nauss in carrying out its business operations;

- (c) Nauss' employees non-unionized and it has no pension plans or other employee benefit plan;
- (d) On August 9, 2017, Canadian Imperial Bank of Commerce (the "**Bank**"), as lender, and Nauss, as borrower, entered into a credit agreement (the "**Credit Agreement**"), pursuant to which the Bank extended to Nauss: (i) a line of credit in the principal amount of \$50,000 (the "**LOC Facility**"); and (ii) a term loan in the principal amount of \$920,000,000 (the "**SBL Facility**" together with the LOC Facility, the "**Credit Facilities**"). Pursuant to the terms and conditions of the Credit Agreement, the Credit Facilities are repayable on demand;
- (e) As of November 17, 2019 Nauss is indebted to the Bank in the approximate amount of \$929,019.31 plus accruing interest and all other charges and expenses of enforcement (the "**Indebtedness**");
- (f) As security for the Indebtedness, Nauss provided the Bank with:
 - (i) A general security agreement in respect of all of the personal property of Nauss the terms of which are incorporated within the Credit Agreement (the "**GSA**");
 - (ii) A charge/mortgage in the principal amount of \$583,000.00 against the Markstay Millichamp Property (the "**Markstay Millichamp Charge**");
 - (iii) A charge/mortgage in the principal amount of \$206,000.00 against the Espanola Property (the "**Espanola Charge**"); and

- (iv) A charge/mortgage in the principal amount of \$210,000.00 against the Sudbury Property (the “**Sudbury Charge**”, together with the Markstay Millichamp Charge and the Espanola Charge, the “**Mortgages**”);
- (g) Under the terms and conditions of the GSA and each of the Mortgages, Nauss agreed that the Bank would have the right to seek the appointment of a Receiver upon the occurrence of a default thereunder;
- (h) Nauss is in default of both the GSA and each of the Mortgages and owes CRA approximately \$350,000 in respect of unremitted source deductions;
- (i) On June 14, the Bank is delivered to Nauss a demand letter, demanding payment of the Indebtedness in full, and notice of intention to enforce its security pursuant to section 244 of the BIA. The applicable statutory notice period has expired and Nauss has not paid the Indebtedness;
- (j) Nauss is insolvent and facing a cash flow crises, with no readily identifiable source of financing to manage its prospects going forward;
- (k) It is just and convenient, at this time, for the Court to appoint a receiver and manager over the Property. The immediate appointment of a receiver and manager will provide necessary stability, transparency and oversight in the wind-down of Nauss’ operations, and allow for an orderly sale of the Property that will benefit all of Nauss’ stakeholders;
- (l) MNP is a licensed trustee in bankruptcy, and has consented to act as Receiver should the Court appoint it;

- (m) Those other grounds set out in the Affidavit of Sieg Flatt, to be sworn (the “**Flatt Affidavit**”);
- (n) The provisions of the BIA, including Section 243;
 - (a) Section 101 of the CJA;
 - (b) Rules 1.04, 3.02, 16.08, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, c. C.43; and
 - (c) Such further and other grounds as counsel may advise and this Honourable Court permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- (a) The Flatt Affidavit to be sworn, and the exhibits thereto; and
- (b) Such further material as counsel may advise and this Honourable Court may permit.

Date: November 18, 2019

GOWLING WLG (CANADA) LLP
Barrister and Solicitors
Suite 1600, First Canadian Place
100 King Street West, Toronto, ON M5X 1G5

Haddon Murray (LSO# 61640P)
Tel: (416) 862-3604
Email: haddon.murray@gowlingwlg.com

Lawyers for the Applicant

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TO: NAUSS PLUMBING & HEATING INC.
2590 Lasalle Blvd.
Sudbury, ON, P3A 4R7

Dennis Groves
Tel: (705) 566-2359
Email: melnorth@bellnet.ca

AND TO: MNP LTD.
111 Richmond Street West
Suite 300
Toronto, ON M5H 2G4

Jerry Henechowicz
Tel: (416) 515-3924
Fax: (416) 323-5240
Email: jerry.henechowicz@mnp.ca

Proposed Receiver

AND TO: CANADA REVENUE AGENCY C/O DEPARTMENT OF JUSTICE
Ontario Regional Office
The Exchange Tower, Box 36
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Toronto, ON M5X 1K6

Diane Winters
Tel: (416) 973-3172
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Counsel to the Minister of National Revenue

MINISTRY OF FINANCE
Office of Legal Services
33 King Street West, 6th Floor
Oshawa, ON L1H 8H5

Kevin J. O'Hara
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AND TO: FORD CREDIT CANADA LIMITED
P.O. Box 2400
Edmonton, AB T5J-5C7

AND TO: FORD CREDIT CANADA COMPANY
P.O. Box 2400
Edmonton, AB T5J-5C7

AND TO: 739572 ONTARIO LIMITED
17 King's Inn Trail
Thornhill, ON L3T 1T6

AND TO: KORA MANAGEMENT LTD.
1374 Arlington Boulevard
Sudbury, ON P3E 6H8

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

NAUSS PLUMBING & HEATING INC.

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT SUDBURY

NOTICE OF APPLICATION

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haddon.murray@gowlingwlg.com

Lawyers for the Applicant

This is Exhibit "B" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

**Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.**

From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: November 28, 2019 11:25 AM
To: Murray, Haddon
Subject: RE: CIBC v. Nauss - Call today

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

The confirmation now served says Jan 10,2020

J. Robert LeBlanc
Desmarais, Keenan LLP
phone (705) 675-7521 x251
direct line (705)669-4763
fax (705)675-7390
email: leblanc@dklawyers.ca

15 MacKenzie Street
Sudbury, ON P3C 4Y

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From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: Thursday, November 28, 2019 10:22 AM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: RE: CIBC v. Nauss - Call today

To confirm, is the adjournment to January 10, 2020 (which I note is a typo in my email below, where I wrote 2019) – or will further steps have to be taken to bring the application on for that date?

Haddon Murray
Associate
T +1 416 862 3604
haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: November-28-19 10:17 AM
To: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Subject: RE: CIBC v. Nauss - Call today

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Haddon---Agreed—I just spoke with the Court office. They have removed it from the list. I will shortly send you and file this am a confirmation notice adjourning the matter on consent. If there are any questions please advise. Thank you

J. Robert LeBlanc
 Desmarais, Keenan LLP
 phone (705) 675-7521 x251
 direct line (705)669-4763
 fax (705)675-7390
 email: leblanc@dklawyers.ca

15 MacKenzie Street
 Sudbury, ON P3C 4Y

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From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: Thursday, November 28, 2019 9:53 AM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Cc: Fisher, Heather <Heather.Fisher@gowlingwlg.com>; Rockefeller, Eric <Eric.Rockefeller@gowlingwlg.com>
Subject: RE: CIBC v. Nauss - Call today

Bob, I've spoken to my client.

CIBC will consent to the adjournment of the application until January 10, 2019 on the basis that your client consents to the appointment of the receiver unless prior to January 10, 2019 it has:

- 1) Fully paid its indebtedness to CIBC; or
- 2) Provided CIBC with a commitment letter for financing within a time period that is acceptable to CIBC at its sole discretion;
 - a. that is legally binding;
 - b. has no conditions precedent; and
 - c. is from a lender that is acceptable to CIBC at its sole discretion.

Please reply confirming that:

- 1) you have received instructions from your client, who agrees to the terms set out above; and
- 2) you will attend at the Sudbury court tomorrow and inform the court that the matter is adjourned on consent on terms agreed upon by the parties in an exchange of emails between counsel on November 28, 2019.

Regards,

Haddon Murray

Haddon Murray
 Associate
 T +1 416 862 3604
haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: November-28-19 9:40 AM
To: Murray, Haddon <Haddon.Murray@gowlingwlq.com>
Subject: RE: CIBC v. Nauss - Call today

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My client has agreed to the proposed resolution.
Do you have instructions ?
Thank you

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direct line (705)669-4763
fax (705)675-7390
email: leblanc@dklawyers.ca

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Sudbury, ON P3C 4Y

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From: Murray, Haddon <Haddon.Murray@gowlingwlq.com>
Sent: Wednesday, November 27, 2019 2:36 PM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: RE: CIBC v. Nauss - Call today

Call is at 3

Dial in: 866-201-0079
Passcode: 294218#

Haddon Murray
Associate
T +1 416 862 3604
haddon.murray@gowlingwlq.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: November-27-19 2:24 PM
To: Murray, Haddon <Haddon.Murray@gowlingwlq.com>
Subject: RE: CIBC v. Nauss - Call today

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We are getting power surges.
Your email as to time has disappeared—please resend

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15 MacKenzie Street
Sudbury, ON P3C 4Y

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From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: Wednesday, November 27, 2019 1:28 PM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: RE: CIBC v. Nauss - Call today

Is your client available for a call?

Haddon Murray
Associate
T +1 416 862 3604
haddon.murray@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: November-27-19 12:48 PM
To: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Subject: RE: CIBC v. Nauss - Call today

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Is this call to be on a w/out prejudice basis.

J. Robert LeBlanc
Desmarais, Keenan LLP
phone (705) 675-7521 x251
direct line (705)669-4763
fax (705)675-7390
email: leblanc@dklawyers.ca

15 MacKenzie Street

Sudbury, ON P3C 4Y

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From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: Wednesday, November 27, 2019 11:39 AM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Cc: Jerry Henechowicz <Jerry.Henechowicz@mnp.ca>; Flatt, Sieg <Sieg.Flatt@CIBC.ca>; Rockefeller, Eric <Eric.Rockefeller@gowlingwlg.com>; Fisher, Heather <Heather.Fisher@gowlingwlg.com>
Subject: CIBC v. Nauss - Call today

Robert, I've spoken with my client and MNP – we are hoping we can have a call today with everyone on the phone to see if we can come to an agreement about this matter.

Can you please speak with your client and find out what his availability is? As I'm sure you appreciate, its important we address this as soon as possible.

Regards,

Haddon

Haddon Murray
 Associate
 T +1 416 862 3604
haddon.murray@gowlingwlg.com



Gowling WLG (Canada) LLP
 Suite 1600, 1 First Canadian Place
 100 King Street West
 Toronto ON M5X 1G5
 Canada



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This is Exhibit "C" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.

From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: January 6, 2020 5:09 PM
To: Murray, Haddon; Fisher, Heather
Cc: Channing, Sherry
Subject: RE: CIBC v Nauss - follow-up re: Confirmation of Application for Jan 6, 2020

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Yes all this is accurate. Anything else ?

From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: January 6, 2020 4:58 PM
To: Fisher, Heather <Heather.Fisher@gowlingwlg.com>; J. Robert Leblanc <leblanc@dkLawyers.ca>
Cc: Channing, Sherry <Sherry.Channing@gowlingwlg.com>
Subject: RE: CIBC v Nauss - follow-up re: Confirmation of Application for Jan 6, 2020

Robert,

I understand you have spoken to Heather about this today. I have also had a call with the court who informed me that, because nobody attended the November hearing date, the court office won't let us schedule the application to be brought back on the 10th at this point – however, the court clerk said it may be possible to walk up with the motion. With that in mind, I have asked that she set aside the materials for the sitting judge and said we would provide her with a note explaining what happened and asking that they permit us to proceed with the application. The note I intend to add is set out below. Please confirm that you have reviewed the note and are ok with its content as soon as possible.

I have attached relevant correspondence for your convenience.

Regards,

This correspondence relates to CV-19-00008866-0000, which was originally scheduled to be heard in the Sudbury Superior Court of Justice on November 29, 2019. We are counsel to the applicant in this matter in respect of an application to appoint a Receiver over the respondent's property.

I have spoken to the respondent's counsel Mr. Robert LeBlanc (cc'd), who has reviewed this email and confirms that the contents are accurate.

On November 28, 2019, counsel for the respondent and the applicant agreed the application would be adjourned to January 10, 2020, at which point the Receiver would be appointed on consent. The adjournment was to be addressed by the respondent's counsel, who is located in Sudbury.

In accordance with the parties' agreement, counsel for the respondent filed the Confirmation of Application indicating that the matter was to be adjourned on consent to January 10, 2020 (attached). Counsel for the respondent also informed the applicant's counsel on November 28, 2019, that he had spoken to the Court office who had removed the matter from the list for November 29, 2019. Counsel for the debtor did not believe it was necessary to attend as it was for a consent adjournment and did not attend on November 29, 2019.

It appears that there was some miscommunication and the matter was not removed from the list, but proceeded on November 29, 2019. No counsel attended in person and consequently the matter was struck. We received the court's endorsement to this affect on January 6, 2020.

The parties intend to appear before the Court on Friday, January 10, 2020 (as originally contemplated) to walk this matter up so that it can be heard. As noted above, the appointment of the Receiver is on consent and we do not anticipate this matter will take more than 5 minutes of the courts time.

We appreciate the Court's patience as we try to remedy this error.

Haddon Murray

Partner

T +1 416 862 3604

haddon.murray@gowlingwlg.com



From: Fisher, Heather <Heather.Fisher@gowlingwlg.com>

Sent: January 6, 2020 2:29 PM

To: leblanc@dkLawyers.ca

Cc: Murray, Haddon <Haddon.Murray@gowlingwlg.com>; Channing, Sherry <Sherry.Channing@gowlingwlg.com>

Subject: CIBC v Nauss - follow-up re: Confirmation of Application for Jan 6, 2020

Afternoon Robert,

As a follow-up to our call, this email is to provide you with my contact information. After you have had a chance to reach out to your client and speak to the Sudbury court, I look forward to receiving an update on how we are best to proceed on Friday.

I also did some quick digging through my email and the last word we had from you about the Confirmation of Application was on November 28, where you advised us that "I will shortly send you and file this am a confirmation notice adjourning the matter on consent." Can you confirm whether your office filed the Confirmation of Application on November 28, 2019?

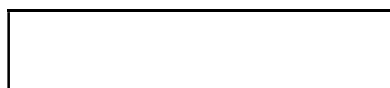
Thanks,

Heather Fisher

Associate

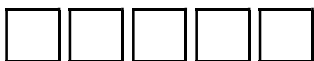
T +1 416 369 7202

heather.fisher@gowlingwlg.com



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DESMARAIS, KEENAN LLP
LAWYERS | AVOCATS

J. Robert LeBlanc
Direct Line: 705-675-7521 ext. 251
Direct Fax: 705-675-7390
Email: leblanc@dklawyers.ca
Assistant: Colette Lauzon
Direct Line: 705-675-7521 ext. 224
Direct Fax: 705-675-7390
Email: lauzon@dklawyers.ca

November 28th, 2019

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
Suite 1600, First Canadian Place
100 King Street West
Toronto, Ontario
M5X 1G5

Attention: Haddon Murray

Dear Sir:

**Re: Canadian Imperial Bank of Commerce vs. Nauss Plumbing & Heating Inc.
Our file #100,235**

Please find enclosed our Confirmation of Application now served upon you pursuant to the Rules.

Yours truly,
DESMARAIS, KEENAN LLP

J. ROBERT LEBLANC

JRL:cl
Enclosures

Court file no. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

and

NAUSS PLUMBING & HEATING INC.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended

CONFIRMATION OF APPLICATION

I, J. ROBERT LEBLANC, lawyer for the Respondent, Nauss Plumbing & Heating Inc. confirm that the Application to be heard on Friday, November 29th, 2019 at 9:30 a.m. will proceed on the following basis:

- for an adjournment on consent to Friday, January 10th, 2020 to be spoken to.
- for a contested adjournment to (date) , for the following reason: *(specify who is requesting the adjournment and why, and who is opposing and why)*
- for a consent order
- for hearing of all the issues
- for hearing of the following issues only *(specify)*

Counsel will refer the presiding judge to the following materials: *(please be specific)*

- Application Record

I estimate that the time required for the motion will be: 20 minutes.

November 28th, 2019

DESMARAIS, KEENAN LLP
Barristers & Solicitors
15 Mackenzie Street
Sudbury, Ontario
P3C 4Y1

J. Robert Leblanc (LSUC#14854R)

Tel: (705) 675-7521
Fax: (705) 675-7390
leblanc@dklawyers.ca

Solicitor for the Respondent

TO:
GOWLING WLG (CANADA) LLP
Barristers & Solicitors
Suite 1600, First Canadian Place
100 King Street West
Toronto, Ontario
M5X 1G5

Haddon Murray (LSUC#61640P)

Tel: (416) 862-3604
Fax: (416) 862-7661
Haddon.murray@gowlingwlg.com

Lawyers for the Applicant

Applicant

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended

Court file #CV-19-00008866-0000

**Ontario
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Sudbury**

**CONFIRMATION OF
APPLICATION**

Name, address and telephone number of new solicitor

Desmarais, Keenan LLP
Barrister & Solicitor
15 Mackenzie Street
Sudbury ON P3C 4Y1

J. ROBERT LEBLANC (LSUC#14854R)
(705) 675-7521
Fax: (705) 675-7390
leblanc@dklawyers.ca

Lawyer for the Respondent

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

NAUSS PLUMBING & HEATING INC.

Applicant

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended

Nov 29/19 10:10 - No one present. The matter is struck for the 1st.

R. Haddon

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT SUDBURY

APPLICATION RECORD

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5
Tel: 416-862-7525
Fax: 416-862-7661

Haddon Murray (LSO# 61640P)

Tel: 416-862-3604
haddon.murray@gowlingwlg.com

Lawyers for the Applicant, Canadian Imperial Bank of Commerce

SUPERIOR COURT OF JUSTICE
COUR. SUPÉRIEURE DE JUSTICE
FILED/DÉPOSÉE



20 NOV. 2019

AT/À SUDBURY

This is Exhibit "D" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

**Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.**

Court File No. CV-19-8866-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	FRIDAY, THE 10 th
)	
JUSTICE)	DAY OF JANUARY, 2020

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant 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 MNP Ltd. ("**MNP**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Nauss Plumbing & Heating Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 155 Elm Street, Sudbury, Ontario.

ON READING the affidavit of Sieg Flatt sworn November 19, 2019, and the Exhibits thereto, and on reading the supplemental affidavit of Sieg Flatt sworn November 25, 2019, and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and those other parties listed on the counsel slip, and on being advised that the Debtor and 739572 Ontario Limited ("**739**") do not oppose the within Order, no one else appearing for any other party

although duly served as appears from the affidavits of service of Cherie Mitchell sworn November 19, 2019 and November 25, 2019 and on reading the consent of MNP to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor 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**" hereto (the "**Schedule "B" Real Property**") and the lands and premises listed in Schedule "**C**" hereto (the "**Schedule "C" Real Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (f) to settle, extend or compromise any indebtedness owing to the Debtor;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (i) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$50,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property including as against the Real Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. 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.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that, except as otherwise permitted by paragraph 10 of this Order, no Proceeding against or in respect of the Debtor or the Property shall be commenced or

continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that, except as otherwise provided in this paragraph 10, all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. Notwithstanding anything otherwise contained in this paragraph 10, in relation to its Charge/Mortgage registered in favour of 739, as Instrument No. SD342507, on September 5, 2017 (the "**739 Charge**"), 739 shall be at liberty to (i) issue a notice of intention to enforce security pursuant to section 244 of the BIA, (ii) issue a notice of sale under mortgage in respect to the Schedule "C" Property, and (iii) to list the Schedule "C" Real Property for sale under power of sale, upon giving the Receiver 30 days prior written notice if 739 is not satisfied with the Receiver's marketing and sale efforts in relation to thereto.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized

banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that, except as otherwise provided for in this paragraph 13, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court. Any rents, funds, monies or other forms of payments received or collected by the Receiver from and after the making of this Order in relation to the Schedule "C" Real Property, shall be deposited into an account to be opened by the Receiver (the "**Schedule "C" Real Property Account**") and the monies standing to the credit of the Schedule "C" Real Property Account shall be paid by the Receiver to 739 and shall be applied by 739 on account of the indebtedness owing under the 739 Charge.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. 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, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. 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

17. 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, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. 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.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that, save except with respect to the Schedule "C" Real Property and the proceeds thereof, the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. With respect to the Schedule "C" Real Property and the proceeds thereof, the Receiver's Charge shall form a second charge on the Schedule "C" Real Property, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but otherwise subject to the 739 Charge and sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$70,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the 739 Charge over the Schedule "C" Real Property, the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates

evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. 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 a Case Website shall be established in accordance with the Protocol with the following URL: www.MNPdebt.ca/Nauss.

26. 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 the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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

27. 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.

28. THIS COURT ORDERS that the Receiver is hereby authorized and empowered, but not obligated, to cause the Debtor to make an assignment in bankruptcy and nothing in this Order shall prevent the Receiver from acting as trustee in the Debtor's bankruptcy.

29. 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.

30. 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.

31. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "**Receiver**") of the assets, undertakings and properties Nauss Plumbing & Heating Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the ___ day of _____, 2019 (the "**Order**") made in an action having Court file number _____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

MNP Ltd., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"**DESCRIPTION OF SCHEDULE "B" REAL PROPERTY**

1. The lands and premises municipally known as 551 Centre Street, Espanola, Ontario and legally described as:
 - **PIN 73407-0024 (LT):** PCL 10208 SEC SWS; PT LT 8 CON 5 MERRITT AS IN LT64894 EXCEPT PT 1 53R13128 & PT 153R17437; S/T PT 2 & 3 53R13128 AS IN LT696426; ESPANOLA
2. The lands and premises municipally known as 2590 Lasalle Blvd., Sudbury, Ontario and legally described as:
 - **PIN 73564-0117 (LT):** PCL 18965 SEC SES; PT LT 9 CON 6 NEELON AS IN LT 109921 EXCEPT LT 1 PL M861; S/T LT80621; GREATER SUDBURY
3. The lands and premises municipally known as 7 Millichamp Street, Markstay, Ontario, and legally described as:
 - **PIN 73484-0035 (LT):** PCL 53626 SEC SES; FIRSTLY: LT 22 PL M1034 HAGAR; SECONDLY: PT LT 12 CON 3 HAGAR PT 1, 53R16102; MARKSTAY-WARREN

SCHEDULE "C"**DESCRIPTION OF SCHEDULE "C" REAL PROPERTY**

The lands and premises municipally known as 1330 North Road, Markstay, Ontario, and legally described as **PIN 73488-0010 (LT):** PCL 51424 SEC SES; PT LT 12 CON 1 LOUGHRIN PT 1 & 2 53R15954; MARKSTAY-WARREN

Court File No. CV-8866-0000

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

NAUSS PLUMBING & HEATING INC.

Applicant

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT SUDBURY

RECEIVERSHIP ORDER

GOWLING WLG (CANADA) LLP

Barristers & Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

Haddon Murray (#61640P)

Tel: 416-862-3604

Fax: 416-862-7661

haddon.murray@gowlingwlg.com

Solicitors for the Applicant

This is Exhibit "E" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.

From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: January 9, 2020 12:23 PM
To: Fisher, Heather
Subject: RE: CIBC v Nauss Plumbing and Heating - draft Receivership Order (response required)

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Agreed.
Thanks

From: Fisher, Heather <Heather.Fisher@gowlingwlg.com>
Sent: January 9, 2020 12:19 PM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: RE: CIBC v Nauss Plumbing and Heating - draft Receivership Order (response required)

You can reply to this email indicating you consent to the form and content of the order. I will take a copy of this email to the court tomorrow.

Heather Fisher
Associate
T +1 416 369 7202
heather.fisher@gowlingwlg.com



From: J. Robert Leblanc <leblanc@dkLawyers.ca>
Sent: January-09-20 12:11 PM
To: Fisher, Heather <Heather.Fisher@gowlingwlg.com>
Subject: RE: CIBC v Nauss Plumbing and Heating - draft Receivership Order (response required)

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Please prepare and send what you wish me to sign.

From: Fisher, Heather <Heather.Fisher@gowlingwlg.com>
Sent: January 9, 2020 10:44 AM
To: DPreger@dickinson-wright.com; J. Robert Leblanc <leblanc@dkLawyers.ca>
Cc: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Subject: RE: CIBC v Nauss Plumbing and Heating - draft Receivership Order (response required)

*Please provide consent via email.

Heather Fisher
Associate
T +1 416 369 7202
heather.fisher@gowlingwlg.com



From: Fisher, Heather

Sent: January-09-20 10:38 AM

To: 'DPreger@dickinson-wright.com' <DPreger@dickinson-wright.com>; 'J. Robert Leblanc' <leblanc@dkLawyers.ca>

Cc: Murray, Haddon <Haddon.Murray@gowlingwlg.com>

Subject: CIBC v Nauss Plumbing and Heating - draft Receivership Order (response required)

Good morning gentlemen,

Attached is the revised draft order for the Nauss matter, which reflects all parties requested changes and indicates this receivership is on the consent of the Debtor and 739572.

Please review and provide your consent via as to the form and content of the order.

Thanks,

Heather Fisher

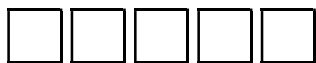
Associate

T +1 416 369 7202

heather.fisher@gowlingwlg.com



Gowling WLG (Canada) LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5
Canada



gowlingwlg.com

Gowling WLG | 1,400+ legal professionals | 18 offices worldwide

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Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at <http://www.gowlingwlg.com/legal>.

References to 'Gowling WLG' mean one or more members of Gowling WLG International Limited and/or any of their affiliated businesses as the context requires. Gowling WLG (Canada) LLP has offices in Montréal, Ottawa, Toronto, Hamilton, Waterloo Region, Calgary and Vancouver.

This is Exhibit "F" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.

From: Colette Lauzon <lauzon@dkLawyers.ca>
Sent: January 10, 2020 9:27 AM
To: Murray, Haddon
Cc: Fisher, Heather
Subject: Re: Nauss Plumbing
Attachments: 202001100916.pdf

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Please find enclosed documentation received late yesterday.
Notwithstanding the consent, I am instructed to attend an ask for a further adjournment to try to finalize these sales.

I have copied Ms. Fisher and will attend Court early to discuss with her.
Sorry for the short notice.

Yours truly,

J. ROBERT LEBLANC

Colette Lauzon

Legal Assistant to J. Robert Leblanc
Desmarais, Keenan LLP
15 MacKenzie Street
Sudbury, Ontario P3E 4Y1
(705) 675-7521
Fax: (705) 675-7390

J. Robert Leblanc

From: Denis Groves <manager@naussplumbing.ca>
Sent: January 9, 2020 10:28 AM
To: J. Robert Leblanc
Subject: FW: Letter of Intent (with a signature)
Attachments: letterof intent.pdf

Good morning Robert,

Please find attached a letter of intent from the purchaser for the Jennica Springs portion of my business including the building on 1330 North Rd Markstay for \$ 425,000.00

I also spoke with Mitch Spiegel this morning and he will have a letter of commitment for a combined mortgage on the 2590 Lasalle Sudbury building and the 7 Millichamp building in Markstay for a total of \$ 400,000.00

I am still working on the Espanola building

Do you think this will be enough to hold them at bay until I can get the Espanola building sold?

Please let me know

Thank You

Denis

From: Elena Zolotko [mailto:ezolotko123@gmail.com]
Sent: January 9, 2020 6:19 AM
To: Denis Groves <manager@naussplumbing.ca>
Subject: Letter of Intent (with a signature)

Hi Denis,

I'm also sending you a scanned Letter of Intent with my signature if needed.

Best Regards,

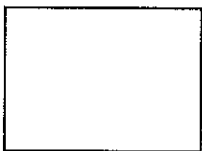
Elena Zolotko, Ph.D.

Founder & CEO

EZ Intermedia Inc.

Cross-Cultural Marketing & PR

ezintermedia.ca





EZ InterMedia Inc.

ezintermedia.ca
ezecodesign.com
ipaclabs.com

2312-16 Harrison Garden Blvd.
Toronto, ON, M2N 7J6
Canada

Issue Date: January 8, 2020

HST # 82689 7662

Tel: 416-688-0278
Email: ezolotko@rogers.com

LETTER OF INTENT

TO: Whom it May Concern
RE: Purchase Jennica Springs (property and business)

This is to inform you that we have concluded to purchase Jennica Springs Water source (property and a building/water filling plant) located at: 1330 North Rd. Pc151 424 SEC SES; Pt Lot 12, Con1, Loughrin, Parts 1&2 of plan 53R1 15954; Markstay Warren,

And a business associated with water bottling

For the sum of \$425,000.00

We intend to finalize the purchase by the end of January 2020. By this time we will have all the necessary paperwork ready. The documents will be completed and signed by the relevant parties. After that, we shall agree on a date when we will officially start operations of the business.

Sincerely,

Elena Zolotko
CEO

A handwritten signature in black ink, appearing to be 'E. Zolotko', written over a horizontal line.

J. Robert Leblanc

From: Denis Groves <manager@naussplumbing.ca>
Sent: January 9, 2020 2:37 PM
To: J. Robert Leblanc
Subject: RE: Letter of Intent (with a signature)

Hi Bob,

One of my employees who wanted to buy the Jennica water company says he can get me an offer this afternoon for \$300k

Will that help?

From: J. Robert Leblanc [mailto:leblanc@dkLawyers.ca]
Sent: January 9, 2020 12:57 PM
To: Denis Groves <manager@naussplumbing.ca>
Subject: RE: Letter of Intent (with a signature)

From: Denis Groves <manager@naussplumbing.ca>
Sent: January 9, 2020 10:28 AM
To: J. Robert Leblanc <leblanc@dkLawyers.ca>
Subject: FW: Letter of Intent (with a signature)

Good morning Robert,

Please find attached a letter of intent from the purchaser for the Jennica Springs portion of my business including the building on 1330 North Rd Markstay for \$ 425,000.00

I also spoke with Mitch Spiegel this morning and he will have a letter of commitment for a combined mortgage on the 2590 Lasalle Sudbury building and the 7 Millichamp building in Markstay for a total of \$ 400,000.00

I am still working on the Espanola building

Do you think this will be enough to hold them at bay until I can get the Espanola building sold?

Please let me know

Thank You

Denis

From: Elena Zolotko [mailto:ezolotko123@gmail.com]
Sent: January 9, 2020 6:19 AM
To: Denis Groves <manager@naussplumbing.ca>
Subject: Letter of Intent (with a signature)

Hi Denis,

I'm also sending you a scanned Letter of Intent with my signature if needed.

Best Regards,

Elena Zolotko, Ph.D.
Founder & CEO



**MD
FINANCIAL
CORPORATION**
Lic. # 10714

3089 Bathurst St., Suite 312
Toronto, Ontario M6A 2A4
Tel: 416-782-5777
Fax: 416-782-1048

January 9, 2020

Mr. Denis Anthony Groves
2816 Greenvally Drive
Sudbury, ON P3E 5G3

Attention: Mitch Speigel

**RE: BLANKET FIRST MORTGAGE FINANCING
7 MILLICHAMP STREET, MARKSTAY, ONTARIO P0M 2G0 AND
2590 LASALLE BOULEVARD, SUDBURY, ONTARIO P3A 4R7**

We are pleased to offer you the following commitment for your consideration:

VALUED AT: \$300,000.00 – 7 Millichamp
\$400,000.00 – 2590 Lasalle

LOAN AMOUNT: \$400,000.00

INTEREST RATE: 9% (compounded monthly)

TERM: 1 year

PAYMENT: \$3,000.00 Interest only monthly

CLOSING DATE: ASAP

CONDITIONS:

- a) Open anytime for repayment with 3 months penalty.
- b) Non-transferable.
- c) Borrower to provide 12 post dated cheques to the lender(s).
- d) \$250.00 NSF or late payment fee.
- e) Title insurance required.
- f) Payment must be received in lender's office before 1:00pm
- g) Borrower acknowledges that this mortgage financing is from a Private Lender.
- h) Lender has the right to assign this commitment to a third party of their choice without the consent of the borrower.
- i) Borrower to provide photo I.D.
- j) Lender has the right to split this commitment into 2 separate mortgages

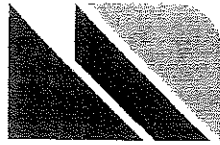
BORROWER: Nauss Plumbing & Heating Inc.

GUARANTOR: Denis Anthony Groves

FEES:

Inspection Fee:	\$ 1,000.00 MD Financial Corporation
Lender Fee:	\$ 8,000.00
Brokerage Fee:	\$ 4,000.00 MD Financial Corporation
Brokerage Fee:	\$ 4,000.00 The Mortgage Group
Legal Fee:	\$ 2,500.00 estimate + HST & disbursements
TOTAL:	\$ 19,500.00

MORTGAGES BOUGHT, SOLD AND ARRANGED



**MD
FINANCIAL
CORPORATION**
Lic. # 10714

3089 Bathurst St., Suite 312
Toronto, Ontario M6A 2A4
Tel: 416-782-5777
Fax: 416-782-1048

- SECURITY:** Major Security for this loan includes:
- a) Registered Blanket First mortgage for \$400,000.00 over subject properties. Realty taxes to be paid in full.
 - b) Satisfactory insurance coverage as verified by lender's independent insurance advisor and naming lender as loss payee.
 - c) Personal guarantees of Denis Anthony Groves and all shareholders of the borrower for the full amount of the loan on a joint and several basis.
 - d) Assignment of all rents (If applicable).
 - e) Chattel charge over both properties with PPSA

LEGAL FEE: A standby fee of \$2,500.00 is payable to Lloyd Rubinoff in Trust and must be accompanied with the signed acceptance of this commitment. In the event the applicant is unable to or unwilling to fulfill the conditions within this letter this fee will be forfeited and deemed to pay for work done on behalf of the lender. (**Certified funds only**)

INSPECTION FEE: An inspection fee of \$1,000.00 payable to MD Financial Corporation will be deducted on closing.

CONDITIONS PRECEDENT

- TO FUNDING:** Prior to the advance, the lender shall be satisfied that each of the following conditions have been met by the borrower.
- a) All security is in place to the satisfaction of the lender and its solicitor.
 - b) Evidence of satisfactory title and zoning has been provided.
 - c) Subject to satisfactory appraisal of subject properties showing a minimum value of \$300,000.00 for 7 Millichamp and \$400,000.00 for 2590 Lasalle addressed to the lender. (at borrowers' expense)
 - d) Subject to satisfactory inspection of the subject property by the lender or his agent.
 - e) This Commitment shall be null and void after January 16, 2020 if not accepted by then.
 - f) Subject to satisfactory Phase 1 environmental report on both properties.

**OTHER
CONDITIONS:**

- Borrower agrees to:
- a) Provide such other information and documentation as reasonable requested by the lender
 - b) All legal fees incurred by the lender to be paid by the borrower as stated in this commitment.
 - c) Pay to the lender his fee of \$8,000.00 and to the brokers their fee of \$9,000.00 should the borrower fail to close through no fault of the lender, as a pre-estimated of their liquidated damages.



**MD
FINANCIAL
CORPORATION**
Lic. # 10714

3089 Bathurst St., Suite 312
Toronto, Ontario M6A 2A4
Tel: 416-782-5777
Fax: 416-782-1048

Yours very truly,
MD FINANCIAL CORPORATION

LARRY S. GWYNNE

ACCEPTANCE OF BORROWER

I the undersigned, hereby accept the terms and conditions as set out above.

X Dated at _____ this _____ day of _____ 2020.

f
BORROWER – _____
NAUSS PLUMBING & HEATING INC.

X
GUARANTOR – _____
DENIS ANTHONY GROVES

L

AMORTIZATION SUMMARYTransaction No:
MDFC-3689-1

Prepared For: Nauss Plumbing & Heating Inc.

MORTGAGE INFORMATION

Mortgage Amount:	\$ 400,000.00	Closing Date:	
Interest Rate:	9.000%	Interest Adjustment Date:	
Amortization:	0 Years 0 Months	First Payment Date:	
Term:	12 Months	Maturity Date:	
Disclosure Rate:	13.875%	Interest Adjustment Amount:	\$ 0.00
Payment Frequency:	Monthly	Interest Only:	Yes
Compounded:	Monthly		

MORTGAGE SUMMARY

Monthly Payment: \$ 3,000.00

Total Payments:	\$ 36,000.00
Total Interest:	\$ 36,000.00
Total Principal:	\$ 0.00
Balance Remaining at Maturity:	\$ 400,000.00

Prepared by : Agent
Larry Gwynne - M08006342
MD Financial Corporation CIMBC

312 - 3089 Bathurst Street
Toronto, Ontario
M6A 2A4
10714

Tel : (416) 782-5777
Fax : (416) 782-1048
E-mail : lsgwynne44@gmail.com

X
E. + O. E.

AMORTIZATION SCHEDULE

Payment Date	Interest	Principal	Balance
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
	\$ 3,000.00	\$ 0.00	\$ 400,000.00
At End of Term:	\$ 36,000.00	\$ 0.00	\$ 400,000.00

X

J. Robert Leblanc

From: Denis Groves <manager@naussplumbing.ca>
Sent: January 9, 2020 10:01 PM
To: J. Robert Leblanc
Subject: Nauss

Good evening Robert

I appreciate that you will try to get us an extension tomorrow and I just wanted to point out a few facts that may help that argument.

The purchasers that want to buy the Jennica Springs business and property have been in negotiations with me for over a year and are committed to completing the sale. We would have had a formal agreement if not for the fact that they are Russian and one of the two partners was back in Russia for Christmas which is different to our calendar. This partner will be back next week and they are prepared to move forward immediately upon her return.

Is there something else we can supply to prove this.

Because of the unforeseen delay in getting the formal offer due to them being out of country we have decided to put a mortgage on the building in Espanola. Once I was informed the letter of intent was not satisfactory I immediately Spoke with Mitch Speigel and he is confident that we can get a mortgage on the Espanola Building possibly tomorrow (Friday)but more likely a couple more days . That will give us enough funds to satisfy the bank. If they were in agreement We would still proceed in selling the buildings.

It seems ludicrous that for a matter of a few days they would push this into receivership. I appreciate that they did give us an extension but I did not foresee the problems with people not being available during the Christmas season.

On another note I understand that you said the court would have little sympathy or even care about how this came about of missing these mortgage payments. As you know This came about due to an employee error. As the owner I should have been aware of this error by my employee.. but I wasn't until I received the foreclosure notice. Things would have been different if the bank had taken the effort to inquire as to what was wrong. My previous long time employee would have caught this error if she had not contracted cancer . She has recently succumbed to that disease. The impact on my family is very significant for the matter of a few days extension.

(My three children all work in the business.) The value of the buildings, businesses and assets greatly exceed what is owed to CIBC but the harm caused by the actions of receivership will cause irreparable damage to what is remaining after CIBC has secured their debt Once creditors are aware this action has been taken, continuing in business will be much more difficult.

I have never reneged on a debt in my life and I take full responsibility for the debt to CIBC.

This is a hell of a penalty for an error by a former employee.

I am counting on you to do everything in your power to have them grant us this short extension.

I am confident I will have the offers/ mortgage secured by wednesday.

Please do what you can for me

Thank you

Denis

Sent from my iPhone

This is Exhibit "G" referred to in the Affidavit of Heather Fisher sworn January 29, 2020.



Commissioner for Taking Affidavits (or as may be)

MAHA MANSOOR

Maha Mansoor, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2021.

Applicant

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT SUDBURY

APPLICATION RECORD

Nov 29/19 10:10 - No one present. The
matter is stayed for the 10th.

Jan. 10th, 2020 Mr. LeBlanc. R. Haddon
Counsel for Gowling H. Fisher.
alleges that there is a binding settlement.
Mr. LeBlanc alleges that there are
recent developments that require
an adjournment so such developments can
be put before the court.
Adjourned sine die to be returned
on five days notice to permit a motion
to be brought to enforce the ^{alleged} settlement.
Costs of the day are reserved.

[Signature]

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haddon.murray@gowlingwlg.com

Lawyers for the Applicant, Canadian Imperial Bank of
Commerce

SUPERIOR COURT OF JUSTICE
SUPERIEURE DE JUSTICE
COUR SUPERIEURE DE JUSTICE
FILED/DEPOSEE

20 NOV. 2019

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

NAUSS PLUMBING & HEATING INC.

Respondent

Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
SUDBURY

**AFFIDAVIT OF HEATHER FISHER
(SWORN JANUARY 29, 2020)**

GOWLING WLG (CANADA) LLP

Barristers & Solicitors

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Lawyers for the Applicant,
Canadian Imperial Bank of Commerce

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

Court File No. CV-19-00008866-0000
NAUSS PLUMBING & HEATING INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
SUDBURY

MOTION RECORD

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