

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.
JUSTICE HAINEY

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WEDNESDAY, THE 5TH DAY
OF DECEMBER 2018



BETWEEN:

ALEX HOI-HONG LEE

Applicant

- and -

XIAO YAN HUANG a.k.a. CINDY WOO,
a.k.a. CINDY HUANG WOO and 1249895 ONTARIO LTD.

Respondents

APPLICATION UNDER sections 208 and 210 of the *Business Corporations Act*, R.S.O. 1990,
c. B.16.

ORDER

(Winding-up of 1249895 Ontario Ltd.)

THIS MOTION made on consent for an Order pursuant to section 208 and 210 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBCA") winding-up 1249895 Ontario Ltd. ("124 Ontario") appointing MNP Ltd. ("MNP") as liquidator of 124 Ontario was heard this day at 330 University Avenue, Toronto, Ontario.

~~ON READING the Affidavit of [name], and on~~ hearing the submissions of counsel for the Applicant and the Respondent Xiao Yan Huang A.K.A. Cindy Woo, A.K.A. Cindy Huang Woo, no one appearing for 124 Ontario,

WINDING-UP OF 124 Ontario

1. THIS COURT ORDERS that 124 Ontario be wound-up and for that purpose MNP be and is hereby appointed as liquidator of the effects and estate of 124 Ontario effective from this date with the powers and obligations set forth in Part XVI of the OBCA and this

Order. Where there is any inconsistency between the powers provided to MNP under the OBCA and this Order, the terms of this Order shall govern to the extent that they restrict or limit the powers of MNP.

MNP'S POWERS

2. **THIS COURT ORDERS** that MNP is hereby empowered and authorized, but not obligated, to act at once in respect of the assets, property and undertaking of 124 Ontario (the "**Property**") and, without in any way limiting the generality of the foregoing, MNP is hereby expressly empowered and authorized to do any of the following where MNP 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 manage, operate, and carry on the business of 124 Ontario, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of 124 Ontario;
 - (d) to engage consultants, appraisers, agents, experts, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of MNP's powers and duties, including without limitation those conferred by this Order;
 - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of 124 Ontario or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to 124 Ontario and to exercise all remedies of 124 Ontario in collecting such monies, including, without limitation, to enforce any security held by 124 Ontario;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in MNP's name or in the name and on behalf of 124 Ontario, 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 124 Ontario, the Property or MNP and 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 and subject to an Order of the Court to settle or compromise any such proceeding;
- (i) to market the Property for sale and, subject to approval of the Court, negotiate such terms and conditions of sale as MNP in its discretion may deem appropriate;
- (j) to apply to the Court 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;
- (k) to report to, meet with and discuss with such affected Persons (as defined below) as MNP deems appropriate on all matters relating to the Property and to share information, subject to such terms as to confidentiality as MNP deems advisable;
- (l) 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 in the name of 124 Ontario;
- (m) to exercise any shareholder, partnership, joint venture or other rights which 124 Ontario may have; and

- (n) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including the wind-up or dissolution of 124 Ontario.

and in each case where MNP 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 124 Ontario, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO MNP

- 3. **THIS COURT ORDERS** that (i) 124 Ontario, (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 MNP of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to MNP, and shall deliver all such Property to MNP upon MNP's request.
- 4. **THIS COURT ORDERS** that all Persons shall forthwith advise MNP 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 124 Ontario, 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 MNP or permit MNP to make, retain and take away copies thereof and grant to MNP unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to MNP due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
- 5. **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 MNP for the purpose of allowing MNP 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 MNP in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of MNP. Further, for the purposes of this paragraph, all Persons shall provide MNP with all such assistance in gaining immediate access to the information in the Records as MNP may in its discretion require including providing MNP with instructions on the use of any computer or other system and providing MNP with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST MNP

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

NO PROCEEDINGS AGAINST 124 ONTARIO OR THE PROPERTY

7. **THIS COURT ORDERS** that no Proceeding against or in respect of 124 Ontario or the Property shall be commenced or continued except with the written consent of MNP or with leave of this Court and any and all Proceedings currently under way against or in respect of 124 Ontario or the Property are hereby stayed and suspended pending further Order of this Court.

NO INTERFERENCE WITH MNP

8. **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 124 Ontario, without written consent of MNP or leave of this Court.

CONTINUATION OF SERVICES

9. **THIS COURT ORDERS** that all Persons having oral or written agreements with 124 Ontario 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 124 Ontario 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 MNP, and that MNP shall be entitled to the continued use of 124 Ontario'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 MNP in accordance with normal payment practices of 124 Ontario or such other practices as may be agreed upon by the supplier or service provider and MNP, or as may be ordered by this Court.

MNP TO HOLD FUNDS

10. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by MNP 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 (the "**Funds**"), shall be deposited into one or more new accounts to be opened by MNP (the "**Liquidator's Accounts**") as required by section 227 of the OBCA and the monies standing to the credit of the Liquidator's Accounts from time to time, net of any disbursements provided for herein, shall be held by MNP to be paid in accordance with the terms of this Order or any further Order of this Court.
11. **THIS COURT ORDERS** that MNP shall distribute the Funds to the Applicant and the Respondent Xiao Yan Huang A.K.A. Cindy Woo, a.k.a. Cindy Huang Woo pursuant to Paragraphs 4 and 5 of the Minutes of Settlement dated November 26, 2018 signed by the Applicant and the Respondents.

EMPLOYEES

12. **THIS COURT ORDERS** that all employees of 124 Ontario shall remain the employees of 124 Ontario until such time as MNP, on 124 Ontario's behalf, may terminate the

employment of such employees. MNP shall not be liable for any employee-related liabilities, including any successor employer liabilities other than such amounts as MNP may specifically agree in writing to pay. 124 Ontario shall make all employee-related remittance from an after the date of this Order.

PIPEDA

13. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, MNP 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 MNP, 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 124 Ontario, and shall return all other personal information to MNP, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

14. **THIS COURT ORDERS** that nothing herein contained shall require MNP 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 MNP from any duty to report or make disclosure imposed by applicable Environmental Legislation. MNP shall not, as a result

of this Order or anything done in pursuance of MNP'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 MNP'S LIABILITY

15. **THIS COURT ORDERS** that MNP 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 the part of MNP.

LIQUIDATOR'S ACCOUNTS

16. **THIS COURT ORDERS** that MNP and counsel to MNP 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 MNP and counsel to MNP shall be entitled to and are hereby granted a charge (the "**Liquidator'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 the Liquidator'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 subordinate in priority to any valid and enforceable security interests registered against the Property in favour of Persons not related to, or not dealing at arm's length with, 124 Ontario as of the date of this Order.
17. **THIS COURT ORDERS** that MNP and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of MNP and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
18. **THIS COURT ORDERS** that prior to the passing of its accounts MNP 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 MNP or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF MNP

19. **THIS COURT ORDERS** that MNP 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 \$250,000 (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 MNP 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 "**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: (i) any valid and enforceable security interests registered against the Property in favour of Persons not related to, or not dealing at arm's length with, 124 Ontario as of the date of this Order; and (ii) the Liquidator's Charge.
20. **THIS COURT ORDERS** that neither the Borrowings Charge nor any other security granted by MNP in connection with its borrowings under this Order shall be enforced without leave of this Court.
21. **THIS COURT ORDERS** that MNP is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Liquidator's Certificates**") for any amount borrowed by it pursuant to this Order.
22. **THIS COURT ORDERS** that the monies from time to time borrowed by MNP pursuant to this Order or any further order of this Court and any and all Liquidator'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 Liquidator's Certificates.

SERVICE AND NOTICE

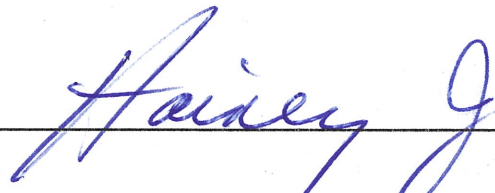
23. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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/124-Ontario.

24. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, MNP 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 interested parties 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

25. **THIS COURT ORDERS** that MNP may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
26. **THIS COURT ORDERS** that the Parties shall bear their own costs except as stipulated in the Minutes of Settlement agreed upon by the Parties.
27. **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 MNP 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.



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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 05 2018

PER / PAR:



SCHEDULE "A"

LIQUIDATOR'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the Liquidator (the "**Liquidator**") of the effects and estate of 1249895 Ontario Ltd., 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 (Commercial List) (the "**Court**") dated the ___ day of December, 2018 (the "**Order**") made in an action having Court file number CV-17-578435-00CL, has received as such Liquidator from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Liquidator 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 Liquidator 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 Liquidator 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 Liquidator 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 Liquidator to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Liquidator 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 court-appointed Liquidator of 1249895
Ontario Ltd., and not in its personal capacity

Per: _____

Name:

Title:

ALEX HOI-HONG LEE and

Applicant

XIAO YAN HUANG a.k.a. CINDY WOO,
a.k.a. CINDY HUANG WOO and 1249895
ONTARIO LTD

Respondents

Court File No.: CV-17-578435-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

ORDER

(Winding-up of 1249895 Ontario Ltd.)

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