

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

BETWEEN:

CANADIAN WESTERN BANK

Applicant

1000179473 ONTARIO INC. and 2724393 ONTARIO INC.

Respondents

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
(Motion Returnable November 14, 2023)**

November 9, 2023

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**Lawyers for the Court-appointed
Receiver, MNP Ltd.**

TO: SERVICE LIST

SERVICE LIST
(as at September 18, 2023)

Receiver's URL: www.mnpdebt.ca/2724393&100017943Ontario

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SUPERIOR COURT OF JUSTICE
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- 1 Notice of Motion dated November 9, 2023
- 2 First Report of MNP Ltd. dated November 9, 2023
- A Appointment Order dated July 21, 2023
- B Letter from Chaitons LLP to Malik Eftikhar dated August 15, 2023
- C Copies of correspondence dated August 15, August 16 and August 25, 2023
- D Letter from Receiver dated October 12, 2023

TAB 1

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

BETWEEN:

CANADIAN WESTERN BANK

Applicant

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Respondents

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 MOTION
(Motion Returnable November 14, 2023)**

MNP Ltd. (“MNP”), in its capacity as Court-appointed receiver of 1000179473 Ontario Inc. and 2724393 Ontario Inc. (“the **Receiver**”), will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List) on Tuesday, November 14, 2023, at 11:00 a.m., or as soon after that time as the motion can be heard, via Zoom at Toronto, Ontario.

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);
- In person
- By telephone conference
- By video conference

THE MOTION IS FOR:

1. an order abridging the time for service of this notice of motion and the motion record so that the motion is properly returnable on November 14, 2023;
2. an order approving the Receiver's First Report dated November 9, 2023 (the "**First Report**"), and the conduct and activities of the Receiver described therein;
3. an order directing Malik Eftikhar and Khalid Nur to comply with the Receiver's request for information, and cause the Companies to provide all of the requested books and records of the Companies in his possession or control;
4. an order approving the Sale Process described in the First Report, *nunc pro tunc*, and authorizing the Receiver to take all steps necessary to conduct the Sale Process, including entering into the Listing Agreements (as defined below);
5. an order sealing Confidential Appendices 1 to 5 to the First Report; and
6. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

BACKGROUND

1. Pursuant to an Order of this Court made on July 21, 2023 (the "**Appointment Order**"), MNP was appointed Receiver, without security, of the assets, undertakings and property of 1000179473 Ontario Inc. ("**1000 Corp**" or the "**Stratford Station**") and 2724393 Ontario Inc. ("**272 Corp**" or the "**St. George Station**") (collectively the "**Stations**" or the "**Companies**").
2. 1000 Corp owns land municipally known as 269 Erie Street East, Stratford, Ontario (the "**Stratford Property**") and operated a gas station and convenience store on the property under the "Inver" brand. All of this location's fuel is supplied by BCP IV Service Station LP o/a Greenenergy ("**Greenenergy**").

3. 272 Corp. owns lands municipally known as 181 Brant Road, St. George, Ontario (the “**St. George Property**” and collectively, with the Stratford Property, the “**Property**”) and operated a gas station and convenience store on the property under the “Ultramar” brand. All of this location’s fuel is supplied by Parkland Fuel Corporation (“**Parkland**”) pursuant to supply and brand agreements between 272 Corp. and Parkland.
4. Malik Eftikhar (“**Malik**”) is the sole director of 1000 Corp and 272 Corp.
5. The Appointment Order authorizes the Receiver to, *inter alia*:
 - (a) 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) receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes and the placement of such insurance coverage as may be necessary or desirable;
 - (c) market the Property, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and
 - (d) sell, convey, transfer, lease or assign the Property with the approval of this Court.

THE RECEIVER’S ACTIVITIES

6. The Receiver’s activities since its appointment have concentrated on:
 - (a) taking possession and control of the Stations and related assets;
 - (b) confirming and continuing insurance coverage for the Stations;
 - (c) arranging for the security and clean-up of the Stations including reinstating utility services, as necessary;
 - (d) arranging for listing proposals from the Brokers;

- (e) completing an inventory of the Stations consumable inventory including fuel in the underground storage tanks;
 - (f) converting the Companies' known bank accounts to deposit only and having the balances remitted to the Receiver on an on-going basis;
 - (g) filing and mailing statutory Receivership Reports based on available information; and
 - (h) preparing this First Report.
7. The Receiver attempted with very limited success to obtain from Malik financial information and records of the Companies necessary to administer these proceedings.
 8. On August 15, 2023, counsel for the Receiver, Chaitons LLP ("**Chaitons**"), wrote to Malik reminding him of his obligations to co-operate with the Receiver as required by the Appointment Order.
 9. On August 16, 2023, Malik responded by email advising of his health issues and directing the Receiver to his external accountant. On August 25, 2023, Malik sent a further request to his accountant, Mr. Khalid Nur directing the documents in Mr. Nur's possession be sent to the Receiver. The Receiver then made its request for books and records directly to Mr. Nur.
 10. As of the date of this report, no requested documents or information has been received from Malik or his accountant.

SALE PROCESS

11. The Appointment Order, among other things, authorizes the Receiver to market and sell the Stations.
12. The Receiver invited three (3) commercial realtors, Avison Young, CBRE and Colliers, to submit listing proposals for the marketing and sale of the Stations.
13. The Receiver consulted with CWB and Chaitons, regarding the options of listing the Stations for sale and Avison Young was selected as broker (the "**Broker**") based on:

- (a) the commission rate payable to the Broker;
 - (b) the Broker's experience in selling gas stations;
 - (c) the Broker's knowledge of the market; and
 - (d) the Broker's view on the value of the Stations.
14. The Receiver entered into listing agreements with Avison Young for the marketing and sale of the Stations.
15. Avison Young prepared a sale process for the Stations (the "**Sale Process**"). The key terms of the Sale Process are described at paragraphs 20 and 21 of the First Report.
16. The Receiver is of the view that the Sale Process is appropriate for the following reasons:
- (a) the Receiver will retain an experienced and well-recognized commercial real estate brokerage firm to sell the Stations; and
 - (b) the Sale Process has optimized the chance of securing the best possible price for the Stations.

PRE-RECEIVERSHIP BULK FUEL SALES

17. On or about August 8, 2023, the Receiver was contacted by Parkland, the exclusive fuel supplier to the St. George Station who advised they had evidence that approximately 100,000 litres of fuel that was located at the St. George Station (the "**Missing Fuel**") was removed, delivered, transferred to and sold by a third party in the Orillia Region. Further, Parkland was claiming priority to any recovery related to the allegedly missing fuel pursuant to the terms of Parkland's fuel consignment agreement with 272 Corp (the "**Supply Agreement**") since this fuel was not paid for by 272 Corp.
18. Chaitons is providing an opinion on the enforceability and priority of Parkland's claim noted above. In the interim, and as set out below, the Receiver is taking steps to obtain payment for the missing fuel.

19. On October 6, 2023, the Receiver was contacted by the Ontario Provincial Police (“**OPP**”) who, at the request of Parkland, investigated the removal, transfer and sale of the Missing Fuel.
20. An OPP Officer, Through his investigation, the OPP officer confirmed that:
 - (a) the Missing Fuel was delivered to 2691355 Ontario Inc. that operated a Husky Gas Station at 8873 Hwy 11 North, Orillia, Ontario (the “**Husky Station**”);
 - (b) Mr. Ansab Chaudhry (“**Chaudhry**”) was the owner/operator of the Husky Station; and
 - (c) all of the Missing Fuel was already sold by the Husky Station.
21. The Receiver then contacted Chaudhry who:
 - (a) confirmed receipt of the Missing Fuel and its subsequent sale;
 - (b) advised that he accepted the Missing Fuel in payment of funds he alleged were owed to him by 272 Corp.; and
 - (c) held approximately \$50,000 in proceeds from the sale of the Missing Fuel over and above the amount he alleged was owed to him by 272 Corp. but did not know to whom the funds should be remitted.
22. On October 12, 2023, the Receiver then wrote to Chaudhry to obtain a full accounting of the sale proceeds of the Missing Fuel and request that the remaining proceeds held by Chaudry be remitted to the Receiver.
23. As of the date of the First Report, Chaudhry has not provided a full accounting of the sale proceeds for the Missing Fuel.

GENERAL

1. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
2. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The First Report and the Appendices annexed thereto; and
2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 9, 2023

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**Lawyers for the Court-appointed
Receiver, MNP Ltd.**

Applicant

Respondents

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

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

Proceedings commenced at TORONTO

NOTICE OF MOTION

(November 14 , 2023)

CHAITONS LLP

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**Lawyers for the Court-appointed
Receiver, MNP Ltd.**

TAB 2

**ONTARIO
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**FIRST REPORT OF MNP LTD. AS RECEIVER OF THE ASSETS, UNDERTAKINGS AND
PROPERTIES OF THE RESPONDENTS**

November 9, 2023

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APPENDICES

- Appendix “A”:** Appointment Order dated July 21, 2023
- Appendix “B”:** Letter from Chaitons LLP dated August 15, 2023
- Appendix “C”:** Email correspondence dated August 15, August 16, and August 25, 2023
- Appendix “D”:** Letter from Receiver dated October 12, 2023

Confidential Appendix “1”: Appraisals of Colliers

Confidential Appendix “2”: Summary of Listing Proposals

Confidential Appendix “3”: Listing Agreements

Confidential Appendix “4”: Supply Agreement

Confidential Appendix “5”: Email exchange between a fuel transportation company and Parkland

INTRODUCTION

1. On July 21, 2023, MNP Ltd. (“**MNP**”) was appointed as the receiver (the “**Receiver**”) without security, of the assets, undertakings and property of 1000179473 Ontario Inc. (“**1000 Corp**”) and 2724393 Ontario Inc. (“**272 Corp**”, together with 1000 Corp, the “**Companies**” and collectively the property of 272 Corp and 1000 Corp, the “**Property**”) by order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). A copy of the Appointment Order and its corresponding endorsement is attached as **Appendix “A”**.

2. The circumstances leading to the appointment of the Receiver are set out in the affidavit of Rod Randall of the Canadian Western Bank (“**CWB**”) sworn July 13, 2023, filed in support of the Appointment Order (the “**Randall Affidavit**”).

3. 1000 Corp owns land municipally known as 269 Erie Street East, Stratford, Ontario and operated a gas station and convenience store on the property under the “Inver” banner (the “**1000 Station**”). All of this location’s fuel was supplied by BCP IV Service Station LP o/a Greenenergy (“**Greenenergy**”);

4. 272 Corp. owns lands municipally known as 181 Brant Road, St. George, Ontario and operated a gas station and convenience store on the property under the “Ultramar” banner (the “**272 Station**”, together with the 1000 Station, the “**Stations**”). All of this location’s fuel is supplied by Parkland Fuel Corporation (“**Parkland**”) pursuant to supply and brand agreements between 272 Corp. and Parkland.

5. As set out in the Randall Affidavit, both the St. George and Stratford Stations were shut down by the Companies since late June 2023. There were no active employees of the Companies at the Stations at the date of the Receiver’s appointment.

PURPOSE OF THIS REPORT

6. The purpose of the Receiver’s first report, (the “**First Report**”) is to provide the Court with information with respect to:

- (a) the Receiver’s activities since its appointment;
- (b) the Receiver’s attempts to obtain possession of the Companies’ books and records from its principal, Eftikhar Malik (“**Malik**”);

- (c) the Receiver's proposed sale process for the Stations;
- (d) the removal of approximately \$160,000 in value of fuel from the 272 Station and transfer to a third party in advance of the Receiver's appointment;
- (e) the Receiver's recommendation for an order (s), *inter alia*:
 - i. approving the Sale Process and authorizing the Receiver to execute the Listing Agreements, *nunc pro tunc*;
 - ii. that Malik and/or his accountant provide the Receiver with complete unfettered access to the Companies' books and records by no later than 10 business days after the issuance of the order;
 - iii. sealing **Confidential Appendices "1" to "5"** pending a further order of the Court;
 - iv. approving the First Report and the activities of the Receiver as set out herein.

TERMS OF REFERENCE

7. In preparing the First Report, the Receiver has relied on unaudited financial and other information regarding the Companies and their assets which includes, but is not limited to, information (collectively, the "**Information**"):

- (a) provided by the Companies;
- (b) provided by CWB and its legal counsel, Chaitons LLP ("**Chaitons**");
- (c) provided by Parkland and Greenenergy;
- (d) obtained in discussions with Avison Young Commercial Real Estate Services, LP ("**Avison Young**"), CBRE Limited ("**CBRE**") and Colliers International Realty Advisors Inc. ("**Colliers**") and together with Avison Young and CBRE the "**Brokers**";
- (e) obtained from EXP Realty Brokerage ("**EXP**") that had listed the Stations for sale prior to the Receiver's appointment;
- (f) obtained by attending at the Stations; and

(g) as otherwise available to the Receiver and Chaitons.

8. Except as described in this First Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with the Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.

9. All currency references are in Canadian Dollars unless otherwise specified.

ACTIVITIES TO DATE

10. The Receiver's activities since its appointment have concentrated on:

- (a) taking possession and control of the Stations and related assets; confirming and continuing insurance coverage for the Stations;
- (b) arranging for the security and clean-up of the Stations including reinstating utility services, as necessary;
- (c) arranging for listing proposals from the Brokers;
- (d) completing an inventory of the Stations consumable inventory including fuel in the underground storage tanks;
- (e) converting the Companies' known bank accounts to deposit only and having the balances remitted to the Receiver on an on-going basis;
- (f) filing and mailing statutory Receivership Reports based on available information; and
- (g) preparing this First Report

11. The Receiver attempted with very limited success to obtain from Malik financial information and records of the Companies necessary to administer these proceedings. On August 15, 2023, Chaitons wrote to Malik reminding him of his obligations to co-operate with the Receiver as required by the Appointment Order. A copy of Chaitons correspondence is attached as **Appendix "B"**.

12. On August 16, 2023, Malik responded by email advising of his health issues and directing the Receiver to his external accountant. On August 25, 2023, Malik sent a further request to his accountant, Mr. Khalid Nur directing the documents in Mr. Nur's possession be sent to the Receiver. The Receiver then made its request for books and records directly to Mr. Nur. As of the date of this First Report, the Receiver has not received any financial information from Malik or Mr. Nur. Copies of this correspondence are attached as **Appendix "C"**.

13. Based on the above, the Receiver is seeking an order requiring Malik and Nur to provide the Receiver with unfettered access to all of the Companies' financial records, whether physical or electronic by no later than 10 business days following the issuance of the order.

APPRAISALS

14. CWB financed the purchase of the Stratford and St. George Stations pursuant to commitment letters dated January 4, 2023 and April 25, 2023, respectively based on appraisals of the Stations prepared by Colliers in August and November 2022. A copy of the Colliers appraisals are attached hereto as **Confidential Appendix "1"**.

15. Prior to the Receiver's appointment, the Companies listed the Stations for sale with EXP for an aggregate amount which is less than the indebtedness to CWB. These listings were terminated by the Receiver shortly after its appointment.

LISTING AGREEMENTS AND SALE PROCESS

16. The Appointment Order, among other things, authorizes the Receiver to market and sell the Stations.

17. The Receiver invited three (3) commercial realtors, Avison Young, CBRE and Colliers, to each submit listing proposals for the marketing and sale of the Stations. A summary of these listing proposals is attached hereto as **Confidential Appendix "2"**.

18. The Receiver consulted with CWB and Chaitons regarding the options of listing the Stations for sale and Avison Young was selected as broker (the "**Broker**") based on:

- (a) the commission rate payable to the Broker;

- (b) the Broker’s experience in selling gas stations;
- (c) the Broker’s knowledge of the market;
- (d) the Broker’s view on the value of the Stations.

19. The Receiver entered into listing agreements with Avison Yong for the marketing and sale of each Station, copies of which are attached hereto as **Confidential Appendix “3”**.

20. Avison Young’s Sale Process for the Stations is summarized in the table below:

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Pre-marketing</i>		
Due diligence	➤ Review all available documents concerning the Property, including environmental reports and planning and development reports	Pre-marketing launch
Finalize marketing materials	➤ Avison Young and the Receiver to: <ul style="list-style-type: none"> ○ prepare a teaser; ○ populate a virtual data room (“VDR”); ○ prepare a Confidentiality Agreement (“CA”); and ○ prepare a Confidential Information Memorandum (“CIM”) ○ prepare form of Agreement of Purchase and Sale 	September 2023
Prospect Identification	➤ develop a master prospect list; pre-marketing discussions with targeted developers.	September 2023
<i>Phase 2 – Marketing</i>		
Stage 1	➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ Print offering summary and marketing materials; ○ List property for sale on MLS ○ Telephone and email canvassing of leading prospects; and ○ Meet with and interview prospective purchasers. 	October 2023
Stage 2	➤ provide detailed information to qualified prospects which sign the CA, and access to the data room; and ➤ Facilitate all diligence by interested parties.	October 2023
Stage 3	➤ prospective purchasers to submit offers to purchase	Bid deadline 60 days following marketing launch
<i>Phase 3 – Offer Review and Negotiations</i>		

Summary of Sale Process		
Milestone	Description of Activities	Timeline
Selection of successful bid	➤ review of offers in consultation with CWB, negotiate best offers, select successful bidder and finalize definitive documents.	2 weeks after bid deadline.
Sale Approval Motion and Closing	➤ Motion for sale approval and close transaction.	As soon as possible following selection of the successful bidder

21. Additional aspects of the Sale Process include:

- (a) the Stations will be marketed on an “as is, where is” basis;
- (b) the Receiver will have the right to reject any and all offers, including the highest offer; and
- (c) any transaction will be subject to court approval.

22. The Receiver is of the view that the Sale Process is appropriate for the following reasons:

- (a) the Receiver will retain an experienced and well-recognized commercial real estate brokerage firm to sell the Stations; and
- (b) the Sale Process has optimized the chance of securing the best possible price for the Stations.

23. The Receiver respectfully requests that an Order be granted, *nunc pro tunc*, (i) approving the Sale Process, and (ii) authorizing the Receiver to execute the Listing Agreements and to proceed with implementing the Sale Process.

PRE-RECEIVERSHIP BULK FUEL SALES

24. On or about August 8, 2023, the Receiver was contacted by Parkland, the exclusive fuel supplier to the St. George Station who advised they had evidence that approximately 100,000 litres of fuel that was located at the St. George Station (the “**Missing Fuel**”) was removed, delivered, transferred to and sold by a third party in the Orillia Region. Further, Parkland was claiming priority to any recovery related to the allegedly missing fuel pursuant to the terms of Parkland’s fuel

consignment agreement with 272 Corp (the “**Supply Agreement**”) since this fuel was not paid for by 272 Corp. A copy of the Supply Agreement and a copy of an email exchange between a fuel transportation company and Parkland that appears to confirm the removal of the fuel are attached as **Confidential Appendices “4”** and **“5”**, respectively.

25. Chaitons is providing an opinion on the enforceability and priority of Parkland’s claim noted above. In the interim, and as set out below, the Receiver is taking steps to obtain payment for the missing fuel. In the event the Missing Fuel is determined to be the property of Parkland, it has been agreed between the receiver and Parkland that the proceeds of the fuel will be sent to Parkland less the Receiver’s fees in connection with the recovery of the proceeds.

26. On October 6, 2023, the Receiver was contacted by an Ontario Provincial Police Officer (“**OPP Officer**”) who investigated the removal, transfer and sale of the Missing Fuel.

27. Through his investigation, the OPP officer confirmed that:

- (a) the Missing Fuel was delivered to 2691355 Ontario Inc. that operated a Husky Gas Station at 8873 Hwy 11 North, Orillia, Ontario (the “**Husky Station**”);
- (b) Mr. Ansab Chaudhry (“**Chaudhry**”) was the owner/operator of the Husky Station; and
- (c) all of the Missing Fuel was already sold by the Husky Station.

28. The Receiver then contacted Chaudhry who:

- (a) confirmed receipt of the Missing Fuel and its subsequent sale;
- (b) advised that he accepted the Missing Fuel in payment of funds he alleged were owed to him by 272 Corp.; and
- (c) held approximately \$50,000 in proceeds from the sale of the Missing Fuel over and above the amount he alleged was owed to him by 272 Corp. but did not know to whom the funds should be remitted.

29. On October 12, 2023, the Receiver then wrote to Chaudhry to obtain a full accounting of the sale proceeds for the Missing Fuel and request that the remaining proceeds held by Chaudry be remitted

to the Receiver. A copy of the Receiver's correspondence to Chaudhry is attached hereto as **Appendix "D"**.

30. As of the date of the First Report, Chaudhry has not provided a full accounting of the sale proceeds for the Missing Fuel. Chaitons is now taking steps to pursue Chaudhry for a full accounting of the Missing Fuel sale proceeds and remittance of same to the Receiver.

CONCLUSIONS AND RECOMMENDATIONS

31. Based on the foregoing and as outlined in this First Report, the Receiver respectfully requests that this Court issue an order providing the relief sought above in paragraph 6(e).

All of which is respectfully submitted this 9th day of November, 2023.

**MNP LTD. Court Appointed Receiver of
1000179473 Ontario Inc. and 2724393
Ontario Inc.**

Per:



Jerry Henechowicz CPA, CA, CIRP, LIT
Senior-Vice President

Appendix “A”

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

THE HONOURABLE) FRIDAY, THE 21ST
)
JUSTICE STEELE) DAY OF JULY, 2023
)

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

- and -

1000179473 ONTARIO INC. and 2724393 ONTARIO INC.

Respondents

APPLICATION UNDER SUBSECTION 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

**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 (the "**Receiver**") without security, of all of the assets, undertakings and properties of 1000179473 Ontario Inc. ("**1000 Ontario**") and 2724393 Ontario Inc. ("**272 Ontario**") together with 1000 Ontario, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day via videoconference.

ON READING the affidavit of Rod Randall sworn July 13, 2023 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and for the Respondents, 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 Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

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 manage, operate, and carry on the business of the Debtors, 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 the Debtors;
- (d) to engage consultants, appraisers, agents, 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 purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) 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 Debtors, for any purpose pursuant to this Order;

- (i) 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 Debtors, 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;
- (j) 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;
- (k) 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 \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; 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;

- (l) 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;
- (m) 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;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) 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 Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on the Debtors 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 Debtors, 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 DEBTORS OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors 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 Debtors 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 all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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.

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 Debtors, 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 Debtors 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 Debtors 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 Debtors'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 Debtors 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 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.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors'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 Debtors, 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 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.

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 Commercial List 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 \$200,000 (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 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 "B" 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.

RETENTION OF COUNSEL

25. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) 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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL “●”.

27. **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 Debtors's creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

29. **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.

30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

31. **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

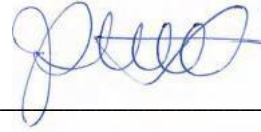
Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. **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.

33. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, 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 Applicant from the Debtors's estate with such priority and at such time as this Court may determine.

34. **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.

35. **THIS COURT ORDERS** that this order is effective from the date it is made, and it is enforceable without any need for entry and filing, provided that any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.



SCHEDULE "A"

Municipal Address: 181 Brant Rd., St. George, Ontario

PIN: 32037-0039 (LT)

Property Description: PT LT 13, CON 2, SOUTH DUMFRIES, AS IN A412953; ;
SOUTH DUMFRIES

Municipal Address: 269 Erie St., Stratford, Ontario

PIN: 53115-0217 (LT)

Property Description: PT LT 133 PL 20 STRATFORD; PT LT 134 PL 20 STRATFORD
DESIGNATED AS PART 1 ON PLAN 44R-5415; STRATFORD;
CITY OF STRATFORD

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "**Receiver**") of the assets, undertakings and properties of 1000179473 Ontario Inc. and 2724393 Ontario Inc. (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 21st day of July, 2023 (the "**Order**") made in an application having Court file number CV-23-00702801-00CL, 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 _____, 202__.

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

Per: _____

Name:

Title:

CANADIAN WESTERN BANK

-and-

1000179473 ONTARIO INC. et al.

Applicant

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO**

ORDER

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Harvey Chaiton (LSO No. 21592F)

Tel: (416) 218-1129

E-mail: harvey@chaitons.com

Laura Culleton (LSO No. 82428R)

Tel: (416) 218-1128

Email: laurac@chaitons.com

Lawyers for the Applicant

Appendix “B”

Laura Culleton

From: Laura Culleton
Sent: Tuesday, August 15, 2023 2:08 PM
To: ihawan.ca@gmail.com
Cc: Harvey G. Chaiton; Jerry Henechowitz; Cory Stark
Subject: In the matter of the receivership of 1000179473 Ontario Inc. and 2724393 Ontario Inc. - Letter to Malik dated August 15, 2023
Attachments: Letter to Eftikhar Malik dated August 15, 2023.pdf

Good afternoon Mr. Malik,

Please see the attached letter as of today's date.

Best,

[Laura Culleton | Lawyer](#)

T: 416.218.1128 E: LauraC@chaitons.com

5000 Yonge St, 10th Floor, Toronto, ON, M2N 7E9

chaitons.com



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Please consider the environment before printing this email

August 15, 2023

VIA EMAIL

Eftikhar Malik ihawan.ca@gmail.com
21 Beechmont Drive
Brampton, ON L6Y 0X9

Re: *In the matter of the receivership of 1000179473 Ontario Inc. and 2724393 Ontario Inc. (the "Debtors")*

Dear Mr. Malik,

As you are aware, on July 21, 2023, the Ontario Superior Court of Justice issued an Order (the "**Appointment Order**") appointing MNP Ltd., as receiver (the "**Receiver**"), over all of the assets, undertakings and properties of the Debtors. A copy of the Appointment Order is attached hereto.

We refer you to the Receiver's emails sent on July 25, 2023 and August 3, 2023 in which the Receiver requested you to provide any books and records of the Debtors, including but not limited to, details of amounts due to creditors, employee records, sales information, and utilities information. The Receiver has advised us that you have failed to provide the Receiver with copies of the documents and any of the information it has requested. In addition, the Receiver has recently discovered that the gasoline storage tanks at both the 267 Erie Street, Stratford and 181 Brant Road, St. George locations were emptied. The Receiver requires you to advise the date the storage tanks were emptied and the disposition of any gasoline removed from the storage tanks.

We refer you to paragraphs 4, 5 and 6 of the Appointment Order, which state the following:

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on the Debtors 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 Debtors, 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.

As such, the Appointment Order specifically requires that you provide access and co-operation to the Receiver in providing the information and documents the Receiver has requested. Any failure to comply will put you in breach of the Appointment Order may lead to contempt of court proceedings against you.

Accordingly, the Receiver requests that you immediately comply with the Appointment Order by providing the Receiver with any and all books and records of the Debtors in your possession and control.

Please forward the requested information by email to jerry.henechowicz@mnp.ca or by courier to the following address by no later than Friday August 18, 2023.:

Attn: Jerry Henechowicz
MNP Ltd., Court-Appointed Receiver of 1000179473 Ontario Inc. and 2724393 Ontario Inc.
Suite 1900, 1 Adelaide Street East
Toronto, ON M5C 2V9

Should you have any questions, please contact Jerry Henechowicz of the Receiver's office at 647.808.0750 or jerry.henechowicz@mnp.ca.

Yours Truly,

CHAITONS LLP



Harvey Chaiton
PARTNER

cc: Canadian Western Bank, MNP Ltd.

Appendix “C”

From: Malik Eftikhar <ihawan.ca@gmail.com>

Sent: Tuesday, August 15, 2023 8:42 PM

To: Laura Culleton <LauraC@chaitons.com>

Subject: Fwd: In the matter of the receivership of 1000179473 Ontario Inc. and 2724393 Ontario Inc. - Letter to Malik dated August 15, 2023

CAUTION: [External]

Hi, I did forward the receiver's email message to the manager asking for the information, who was operating the business in my absence due to my health condition. I will check and ask him once again to either send the information to the receiver directly or send it to me and I will forward the informations required.

Regards:

Eftikhar Malik

From: efty malik <ihawan.ca@gmail.com>

Sent: Wednesday, August 16, 2023 5:58 PM

To: Cory Stark <cory.stark@cwbank.com>; Mirza Z Chaudhary <mirzachaudhary@gmail.com>; Khalid Sb. Mg <nukhalid@outlook.com>; Akhil Kapoor <Akhil.Kapoor@mnp.ca>; Laura Culleton <LauraC@chaitons.com>

Subject: FW: In the matter of the receivership of 1000179473 Ontario Inc. and 2724393 Ontario Inc. - Letter to Malik dated August 15, 2023

CAUTION: [External]

Dear Mr. Mirza Chaudhry and Mr. Khalid Nur, Mr. Akhil Kapoor of MNP is appointed as trustee from court for our gas station site, 269 Erie Street Stratford and 181 Brant Road St George.

Please provide him complete information as per their requirements as this is court order and both of you were looking after business affairs since closing to date. As you are aware I was unable to run the business due to my health issues . I full authorize you both to share all available information to Mr. Akhil as they are asking in the letter attached. If you have any question or concerns please feel free to write me.

Thanks.

Eftikhar Malik

Laura Culleton

From: Eftikhar Malik <ihawan.ca@gmail.com>
Sent: Friday, August 25, 2023 4:52 PM
To: Cory Stark; Mirza Z Chaudhary; Khalid Sb. Mg; Akhil Kapoor; Laura Culleton
Subject: Re: In the matter of the receivership of 1000179473 Ontario Inc. and 2724393 Ontario Inc. - Letter to Malik dated August 15, 2023

CAUTION: [External]

Dear Mirza and Khalid, I had a conversation with Akhil today and he's still waiting for the documents, please contact him and send him whatever documents he needs at your earliest.

Thanks.

Eftikhar Malik.

Sent from my iPhone

On Aug 16, 2023, at 5:58 PM, efty malik <ihawan.ca@gmail.com> wrote:

Dear Mr. Mirza Chaudhry and Mr. Khalid Nur, Mr. Akhil Kapoor of MNP is appointed as trustee from court for our gas station site, 269 Erie Street Stratford and 181 Brant Road St George.

Please provide him complete information as per their requirements as this is court order and both of you were looking after business affairs since closing to date. As you are aware I was unable to run the business due to my health issues. I full authorize you both to share all available information to Mr. Akhil as they are asking in the letter attached. If you have any question or concerns please feel free to write me.

Thanks.

Eftikhar Malik

From: [Laura Culleton](#)

Sent: August 15, 2023 2:08 PM

To: ihawan.ca@gmail.com

Cc: [Harvey G. Chaiton](#); [Jerry Henechowicz](#); [Cory Stark](#)

Subject: In the matter of the receivership of 1000179473 Ontario Inc. and 2724393 Ontario Inc. - Letter to Malik dated August 15, 2023

Good afternoon Mr. Malik,

Please see the attached letter as of today's date.

Best,

[Laura Culleton | Lawyer](#)

T: 416.218.1128 E: LauraC@chaitons.com

5000 Yonge St, 10th Floor, Toronto, ON, M2N 7E9

chaitons.com

<7B23816999DF488F8789B3B74EB7CBC6.jpg>

Appendix “D”

Via Email ansabkhalil@hotmail.com

October 12, 2023

2691355 Ontario Inc. formerly operating as Husky Orillia
8873 Hwy 11 North
Orillia, Ontario

Attention: Mr. Ansab Chaudhry

Dear Sirs:

2724393 Ontario Inc. o/a Ultramar Brant

Further to our conversation (Henechowicz/Chaudhry), on July 21, 2023 MNP Ltd. was appointed as receiver (the "Receiver") of 2724393 Ontario Inc. o/a Ultramar Brant ("2724 Corp.") by order of the Ontario Superior Court of Justice (Commercial List) (the "Appointment Order"). A copy of Appointment Order is attached.

We were advised by the Ontario Provincial Police and you have confirmed that in early June 2023 you took delivery of approximately 100,000 litres of gasoline (the "Gasoline") having an estimated value of approximately \$160,000 that was in storage at 2724 Corp.'s premises in Brant, Ontario.

You further acknowledged that all of the above Gasoline was sold by you. Accordingly, the Receiver requires that you provide by **no later than Friday, October 13, 2023**, a complete accounting of any and all sale proceeds from the Gasoline and remit to the Receiver all sale proceeds from the Gasoline still in your possession.

Please remit the above funds to:
MNP Ltd. in Trust
1 Adelaide St. East, Suite 1900
Toronto, ON M5C 2V9
Attn: Mr. Jerry Henechowicz

Should you require any additional information regarding the above or wish to discuss, please contact the undersigned.

Yours very truly,

MNP Ltd.
Court Appointed Receiver of 2724393 Ontario Inc. o/a Ultramar Brant

Per:



Jerry Henechowicz CPA, CA, CIRP, LIT
Senior Vice-President

c: Chaitons LLP
Attn: Mr. Harvey Chaiton & Ms. Laura Cullerton

CANADIAN WESTERN BANK

- and -

1000179473 ONTARIO INC. et al.

Applicant

Respondents

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

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

Proceedings commenced at TORONTO

MOTION RECORD

(November 14, 2023)

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSO #21592F)

Tel: (416) 218-1129

Email: harvey@chaitons.com

Laura Culleton (LSO #82428R)

Tel: (416) 218-1128

Email: laurac@chaitons.com

**Lawyers for the Court-appointed
Receiver, MNP Ltd.**