

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

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

11603531 CANADA INC.

Respondent

APPLICATION UNDER SECTION 243(1) of the *BANKRUPTCY AND INSOLVENCY ACT*
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE*
ACT, R.S.O. 1990, c. c-43, AS AMENDED

MOTION RECORD

March 21, 2024

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I N D E X

Tab	Document
1.	Notice of Motion dated March 21, 2024
2.	First Report of the Receiver dated March 20, 2024
A.	Appendix “A” – Appointment Order dated November 14, 2023
B.	Appendix “B” – Endorsement of Justice Cavanagh dated November 14, 2023
C.	Appendix “C” – Receiver’s Interim Statement of Receipts and Disbursements
3.	Draft Order

TAB 1

**ONTARIO
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B E T W E E N:

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ACT, R.S.O. 1990, c. c-43, AS AMENDED

NOTICE OF MOTION

MNP Ltd. (“**MNP**”), in its capacity as the Court-appointed receiver and manager (in such capacities, the “**Receiver**”), without security, of all the assets, undertakings, and properties of 11603531 Canada Inc. (the “**Debtor**”), including the real property municipally known as 55 Dundas Street East, Toronto, Ontario, M5B 1C6 (the “**Real Property**”), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, will make a motion to a judge presiding over the Ontario Superior Court of Justice on March 26, 2024 at 12:00 p.m., or as soon after that time as the motion can be heard.

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

- In writing under subrule 37.12.1(1) because it is (*insert one of on consent, unopposed or made without notice*);
- In writing as an opposed motion under subrule 37.12.1(4);

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

at the following Zoom details:

- To Be Provided

THE MOTION IS FOR:

1. An Order validating service of this Motion Record in the manner effected, abridging the time for service thereof, and dispensing with service thereof on any party other than the parties served;
2. An Order approving the “First Report of the Receiver” dated March 20, 2024;
3. An Order compelling the director of the Debtor, Usman Khalid (“**Usman**”), Gold Stock Corporation (“**GSC**”), and all tenants of any units located at the Real Property to provide access to the Real Property including any units therein, to the Receiver and any of the Receiver’s service providers including but not limited to realtors, within 48 hours of a request for access;
4. An Order compelling Usman, GSC, and 10587699 Canada Corp. (“**105**”) to produce, within 48 hours of the date of the Order, all books, records, and documents related to the building (both electronic and hard copy), including, *inter alia*, all financial records, bank statements, disbursements, invoices, fire and safety records and plans, building drawings, keys, leases and sub-leases with respect to the occupation of all units at 55 Dundas;
5. An Order compelling 105 or any other occupant to:

- (a) remove, within 24 hours of the Order, all hazardous materials from the Real Property until such occupant(s) undertake(s) an audit in accordance with the Ontario Fire Code Part 5 “Hazardous Material, Processes and Operations” and obtains required approvals for the storage of such materials; and
 - (b) allow the Receiver and/or its services providers with immediate access thereafter to all units for inspection thereof to confirm removal;
6. Alternatively to paragraph 5(a) above, an Order authorizing the Receiver to proceed accordingly without any further notice to 105 or the occupants;
7. An Order approving the Receiver’s Interim Statement of Receipts and Disbursements as at March 19, 2024;
8. An Order sealing the confidential appendices to the Receiver’s First Report, pending further order of this Honourable Court (the “**Confidential Appendices**”); and
9. Such further and other relief as required in the circumstances and this Honorable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

10. 116 is a corporation incorporated pursuant to the federal laws of Canada. Usman is a director of 116 and was responsible for operations of 116 at the Real Property. 116 owns a five-story building at the Real Property.
11. On or about August 31, 2023, 116 was indebted to Bank of Montreal (the “**Bank**”) for \$7,353,195.25, with interest and costs accruing thereon (the “**Indebtedness**”), with respect to two loans (the “**Loans**”) that the Bank had granted to 116. The Bank holds

security over all assets, undertakings, and properties of 116, including a Mortgage/Charge over the Real Property.

12. GSC, Adnan Khalid, and Khalid Mahmood are the guarantors of the Loans. The Bank holds security over the assets, undertakings, and properties of GSC. GSC is a related company that occupies the third floor at the Real Property.
13. Prior to the Receivership Order, 116 had entered into a Forbearance Agreement (the “FA”) with the Bank to provide 116 time to source alternative financing. The FA was subsequently extended multiple times at the request of 116, but 116 ultimately failed to source alternative financing.

The Receivership Order

14. Pursuant to the terms of the Order of the Honourable Mr. Justice Cavanagh dated November 14, 2023 (the "**Receivership Order**"), the Receiver was appointed as receiver and manager without security, of all the assets, undertakings, and properties of the Debtor (the “**Property**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (“**BIA**”) and section 101 of the *Courts of Justice Act* (“**CJA**”).

The Receiver’s Due Diligence

Real Property Sub-Lease Issues

15. The Receiver’s initial information about leases of units located at the Real Property was based on an appraisal of the Real Property (the “**Appraisal**”) completed in March 2023, which provided a list of eight different tenants.

16. However, in the Receiver's initial meeting with Usman on November 14, 2023, Usman advised that there were only two tenants located at the Real Property:
- (a) 2325084 Ontario Inc. ("**232**"), which occupied the basement and second floor pursuant to two separate leases (the "**232 Leases**"); and
 - (b) 105, which occupied units 300, 401, 402, 501, 502 and the ground floor.

In addition, Usman advised that he represented 116, GSC, and 105.

17. Moreover, when questioned as to the discrepancy of number of tenants, Usman advised that there were sub-leases (the "**Sub-Leases**") with respect to 105's lease (the "**105 Lease**"). Usman nonetheless refused to provide copies of the Sub-Leases.

Real Property Lease Issues: 105 Lease

18. Following the Receiver's initial meeting with Usman, the Receiver followed up on various occasions with Usman for various pieces of information including copies of the Sub-Leases. On or about November 25, 2023, Usman only provided the Receiver with a copy of the 105 Lease.
19. The Receiver observed the following regarding the 105 Lease:
- (a) it is a non-arm's length lease signed by Usman, on behalf of 116, and by Suleman Khalid, on behalf of 105;
 - (b) there are discrepancies between the 105 Lease and the rent roll information that the Receiver received from the Bank, in that the latter indicates,
 - (i) that 105 was only leasing units 300, 401, and 402 at the Real Property; and
 - (ii) that the rent rates are significantly higher than what was documented in the 105 Lease; and

- (c) it contains several discrepancies within the document itself, including the term of the lease, the rates of rent, and non-commercial terms.
20. Usman appears to operate several different businesses from the units covered by the 105 Lease, but the Receiver is uncertain as to which tenants are in Usman's control or the terms under which those tenants operate.

Real Property Lease Issues: 232 Leases

21. The Receiver observed that the 232 Leases expired on December 31, 2022. However, 232 has paid rent for the basement unit to date, in accordance with a document that Usman issued to 232 and that does not contain signatures.
22. The Receiver further notes that 232 paid rent for the second-floor unit up to the end of February 2023.

Failure to Provide Books and Records

23. Usman has failed to provide the Receiver with copies of any of 116's books and accounting records. As such, the Receiver cannot properly calculate the taxes, maintenance, and insurance (the "TMI") for the Real Property.

Delay to Access the Real Property

24. Whenever the Receiver has sought access to the Real Property, Usman has enforced a clause in the 105 Lease that requires a minimum of two-weeks advance notice (the "**105 Clause**"). Usman enforced the 105 Clause when the Receiver sought access to the Real Property for realtor listing proposals, an appraisal, a building conditions site inspection, and building measurements and photos. This has delayed the receivership process.

25. Usman further insists that the Receiver abide by the 105 Clause throughout the sales process, with respect to the showing of the Real Property to prospective purchasers.
26. The 105 Clause is not a commercially reasonable clause. An arms-length tenant would not agree to such a clause. It will continue to significantly delay the receivership process.

Refusal to Access the Real Property

27. Usman has refused to provide the Receiver with access to the Real Property on certain occasions. For instance, Usman refused complete access to the first and third floors of the Real Property when the Receiver was performing an inspection related to potential maintenance, inspection, fire plan and testing deficiencies.
28. Moreover, the Receiver has requested Usman to remove compressed gas cylinders from the Real Property, which have been stored on site without property authority. To date, the Receiver has not received confirmation from Usman of their removal.

Powers of the Receiver

29. Among the powers set out in the Receivership Order, the Receiver is empowered and authorized under paragraph 3(a) to take possession of and exercise control over the Real Property and any and all proceeds, receipts, and disbursements arising out of or from the Real Property.
30. With respect to the Debtor, 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 all other individuals, firms, corporations, governmental bodies

or agencies, or other entities having notice of the Receivership Order (collectively, the “**Persons**”), the court ordered pursuant to the Receivership Order that the Persons shall forthwith advise the Receiver of,

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

31. With regard to the foregoing grounds for motion, the Receiver recommends seeking the relief sought herein.

Approval of Activities and Fees

32. In the First Report of the Receiver (the “**First Report**”), the Receiver has included a detailed description of its activities.

33. The Receiver's activities as set out in the First Report are fair and reasonable and ought to be approved.

Sealing of the Confidential Appendices

34. The Receiver is requesting that the Court seal the Confidential Appendices. The

Confidential Appendices should be sealed as their contents contain commercially sensitive information related to the 105 Lease and the 232 Leases.

Other Grounds

35. As contained in the First Report.
36. Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*.
37. Such further and other grounds as the lawyers may advise.

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

- (a) The First Report; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

DATE: March 21, 2024

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BANK OF MONTREAL

Applicant

-and-

11603531 CANADA INC.

Respondent

Court File No.: CV-23-00705867-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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TAB 2

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

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3,
as amended**

BETWEEN

BANK OF MONTREAL

Applicant

- and -

11603531 CANADA INC.

Respondents

**FIRST REPORT OF MNP LTD. AS RECEIVER OF THE ASSETS, UNDERTAKINGS AND PROPERTIES
OF 11603531 CANADA INC.**

MARCH 20, 2024

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Appendix “A” Appointment Order dated November 14, 2023
Appendix “B” Endorsement of Justice Cavanagh dated November 14, 2023
Appendix “C” Receiver’s Interim Statement of Receipts and Disbursements

CONFIDENTIAL APPENDICES

Confidential Appendix “1” Lease of 10587699 Canada Corp.
Confidential Appendix “2” Lease Extensions for 2325084 Ontario Inc.

INTRODUCTION

1. By order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated November 14, 2023 (the “**Appointment Order**”), MNP Ltd. was appointed receiver (in such capacity, the “**Receiver**”), without security, of those assets, undertakings and properties of 11603531 Canada Inc. (“**116**”) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act*, as more particularly described in the Appointment Order. Attached hereto as **Appendix “A”** is a copy of the Appointment Order. Attached hereto as **Appendix “B”** is a copy of the Endorsement.

2. The Appointment Order was granted upon an application commenced by Bank of Montreal (“**BMO**”) as 116 was in default of its secured obligations to BMO in the amount of approximately \$7.35 million. BMO is secured by a first-ranking mortgage on the Real Property (as described below), an assignment of rents, and a charge on 116’s personal property.

3. Prior to the receivership, BMO had entered into a forbearance agreement with 116 to allow 116 additional time to obtain alternative financing. That agreement was subsequently extended several times at the request of 116 but ultimately 116 was unable to obtain alternative financing leading to granting of the Receivership Order. At the time of the Appointment Order, BMO was owed approximately \$7.4 million, with interest and other charges continuing to accrue.

4. 116 is a corporation incorporated pursuant to the federal laws of Canada. The assets of 116 principally consist of a five-storey retail/office building located at 55 Dundas Street East, Toronto, Ontario (“**55 Dundas**” or the “**Real Property**”).

5. The directors of 116 are Adnan Khalid and Usman Khalid (“**Usman**”). The guarantors of the BMO indebtedness are a related company, Gold Stock Corporation (“**GSC**”), Khalid Mahmood and Adnan Khalid. BMO holds security over the assets, undertakings and properties of GSC, which is not in receivership but occupies the third floor at 55 Dundas and appears to be run by Usman.

6. The indebtedness to BMO arose from:

(a) a \$5,050,000 loan in October 2009 to assist in the financing of the purchase of 55 Dundas; and,

(b) a \$2,697,104 loan in March 2022 to refinance an existing loan made to GSC.

7. At the date of the receivership, 116 was also indebted to the City of Toronto for unpaid property taxes and water bills for an amount in excess of \$500,000.

8. A copy of the parcel register for 55 Dundas was included as Exhibit “G” in the Affidavit of Leo Chun sworn September 7, 2023 (the “**Chun Affidavit**”), included in BMO’s application record dated September 12, 2023 (the “**Application Record**”).

9. The Application Record (including the Chun Affidavit), Appointment Order, Endorsement and all other publicly available information in these proceedings, have been posted to the Receiver’s website (the “**Receiver’s Website**”), which can be found at: <https://mnpdebt.ca/en/corporate/corporate-engagements/11603531-canada-inc>.

PURPOSE OF THIS REPORT

10. The purpose of this first report of the Receiver (the “**First Report**”) is to:

(a) report on the Receiver’s activities since the date of the Appointment Order (the “**Appointment Date**”) and more particularly, the difficulties being encountered with Usman;

(b) seek an Order from the Court approving the following:

(i) compelling Usman, GSC and all tenants of 55 Dundas to provide access within a maximum of 48 hours to the Receiver and any of its service providers, including realtors among others;

(ii) compelling Usman, GSC, 10587699 Canada Corp. (“**105**”) to produce within 48 hours of date of the Order all books, records and documents (both electronic and hard copy) related to the building,

including among others, all financial records, bank statements, disbursements, invoices, fire and safety records and plans, building drawings, keys, and leases and sub-leases with respect to the occupation of all units at 55 Dundas;

- (iii) compelling 105 or any other occupant to:
 - a) remove within 24 hours of the date of the Order all hazardous materials from the Real Property until it undertakes an audit in accordance with the Ontario Fire Code Part 5 “Hazardous Material, Processes and Operations” and obtains required approvals for the storage of such materials;
 - b) allowing the Receiver and or its service providers with immediate access thereafter to all units for inspection thereof to confirm removal; or
 - c) authorizing the Receiver to do so without any further notice to 105 or the occupants; and
- (iv) the Receiver’s Interim Statement of Receipts and Disbursements as at March 19, 2024;
- (v) this First Report and the actions of the Receiver described herein; and,
- (vi) provide the Receiver’s recommendations with respect to the foregoing relief.

TERMS OF REFERENCE

11. In preparing this First Report, the Receiver has relied on unaudited financial and other information regarding the 116 and the Real Property provided to it, including information (collectively the “**Information**”):

- (a) provided by BMO and its legal counsel;

- (b) provided by Usman;
- (c) provided by the City of Toronto;
- (d) set out in the Chun Affidavit, filed in connection with the application for the Appointment Order;
- (e) provided by 2325084 Ontario Inc. (“**232**”);
- (f) provided by Canada Revenue Agency (“**CRA**”); and
- (g) as otherwise available to the Receiver and its counsel.

12. 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.

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

ACTIVITIES OF THE RECEIVER SINCE THE APPOINTMENT DATE

Initial Activities

14. In addition to performing its statutory obligations under the BIA and taking the appropriate conservatory and protective measures, the Receiver carried out the following activities regarding the Real Property, including:

- (a) immediately following its appointment, arranged to meet onsite on November 14, 2023 with Usman to ascertain the status of operations, obtain books and records of 116 and explain the ramifications of the receivership proceedings. During that meeting, the Receiver was advised that 116 only had leases with two companies: 105 and 232. The Receiver was provided with minimal verbal

information relating to the operations and was advised that there were no records onsite;

- (b) promptly advised 116's insurance broker of the Appointment Order to confirm insurance coverages, arrange to be added on as loss payee and additional insured and arrange for payment of monthly premiums;
- (c) arranged for the transfer of utility and maintenance contracts to the care of the Receiver;
- (d) obtained quotes for a building condition, fire protection and life safety assessments and subsequently engaged CDW Engineering to conduct the assessments;
- (e) consulted MNP LLP's property tax specialist department to conduct a review of the property tax assessments for the Real Property, which revealed that the assessment for 55 Dundas appeared reasonable;
- (f) engaged Jones Lang LaSalle Real Estate Services Inc. to conduct an appraisal of 55 Dundas;
- (g) wrote to Canada Revenue Agency ("**CRA**") to ascertain the status of all filings and any deemed trust claims and to register the receivership for HST purposes. We note that to date, no responses have been received;
- (h) provided notice to the tenants of the Receiver's appointment and requirement for ongoing rent to be paid to the Receiver;
- (i) sought listing proposals from provided by three (3) prominent commercial real estate brokerage firms, namely CBRE, Colliers and Avison Young, each of which provided the Receiver with marketing and listing proposals for the Real Property;

- (j) entered into a listing agreement with CBRE to market the Real Property, which commenced on MLS on March 12, 2024 at a list price of \$10 million;
- (k) liaised with the City of Toronto and its bailiff with respect to the outstanding property taxes and assisted BMO in making arrangements to pay the outstanding property tax arrears of \$562,907.55 which has increased the BMO indebtedness to \$8,253,233 as at March 13, 2024.

Real Property Lease Issues

15. At the outset of the receivership, the Receiver had minimal and conflicting information with respect to the status and details of the tenants and related leases. The Receiver’s initial information on the tenant leases was obtained from an appraisal done by Colliers on behalf of 116 in March 2023 (the “**Collier’s Appraisal**”) which purported 8 different tenants as follows:

RENT ROLL SUMMARY		
S ta	Tenant	Occup 1 SF
Basmt	2325084 Ontario Inc.	1,808
Ground Floor Retail	Diamond Centre Canada Inc. - Owner Occupied	2,032
Office	2325084 Ontario Inc.	2,083
Office	Gold Stock Canada Inc. - Owner Occupied	2,183
Office	Zaid Jewellers	700
Office	J Rock Jewellers	700
Office	Jawher Jewellery	650
Office	Ontario Mint Corp - Owner Occupied	1,000
Office	GOLD X Canada Inc. - Owner Occupied	1,000
Total NRA		12,156
Occupied %		100.0%
Vacant %		0.0%

16. During the initial meeting with Usman on November 14, 2023, he advised the Receiver that he represented 116, GSC and 105. He also advised that there were only the following two tenants:

- 232 occupying the basement and second floor pursuant to two separate leases; and
- 105 occupying units 300, 401, 402, 501, 502 and the ground floor.

17. In response to Usman's statement about there being only two tenants, the Receiver questioned Usman as to why the Colliers Appraisal had identified more tenants and enquired if there were sub-leases. Usman responded that there were sub-leases but the terms of the sub-leases were between 105 and the sub-tenants and that there was no requirement for him to provide them to the Receiver since 105 was solely responsible for the rent to 116. The Receiver advised Usman that sub-leases normally require the consent of the landlord and requested Usman to provide copies of all leases and sub-leases promptly to the Receiver.

18. On November 25, 2023, following several follow up requests to Usman for various information, Usman provided the Receiver with a copy of the lease of 105 dated the "2nd day of November 1, 2019" (the "**105 Lease**") which is a non-arm's length lease signed by Suleman Khalid on behalf of 105 and Usman on behalf of 116. A copy of the 105 Lease is attached hereto as **Confidential Appendix "1"**.

19. The Receiver also obtained the rent roll information from BMO that was provided by Usman in 2020, which we note was dated subsequent to the 105 Lease. That rent roll indicated that 105 was only leasing units 300, 401 and 402. That rent roll also purported rents at significantly higher rates than documented in the 105 Lease.

20. It appears that Usman operates several different businesses from the units covered by the 105 Lease, but the Receiver is uncertain which tenants are in fact under Usman's control or the terms by which any of those tenants occupying the units covered by the 105 Lease are operating under.

21. The 105 Lease contains many discrepancies within it, such as the term of the lease, rates and non-commercial terms such as capping TMI at a very low rate for ten years. We note that the charge to 232 for 2023 TMI was more than double per square foot charged to 105. The 105 Lease also includes renewal options for up to October 31, 2079, which is highly unusual according to all realtors consulted with by the Receiver.

22. On February 29, 2024 the Receiver's counsel attended at Court for a scheduling hearing to deal with certain issues relating to Usman's conduct in this receivership. During that hearing Usman disclosed that there were in fact no written sub-leases to provide to the Receiver. Given this disclosure, it is very concerning to the Receiver that there are tenants occupying the premises without any accountability to 116 and this fact may have a detrimental impact to the sale-ability of the Real Property.

23. With respect to the leases of 232 which relate to the basement and the second floor, the Receiver notes that the actual lease expired on December 31, 2022 and that the only evidence of a current "lease" for each of those units is a document, attached hereto as "**Confidential Appendix "2"**", issued by Usman to the tenant which does not include any signatures. We note that to date, 232 has paid rent for the basement unit in accordance with that document and has paid rent for the second-floor unit up to the end of March 2024.

24. 232 has advised the Receiver that it will be vacating the second-floor unit effective March 31, 2024; however, it believes that rent has been overpaid due to estimated TMI amounts which have not been reconciled for several years. The Receiver does not have the records to address that issue.

Books and Records

25. Usman has failed to provide any of 116's accounting records to the Receiver and the Receiver is unable to properly calculate the TMI for the Real Property and amounts that may be owing by the tenants. Usman has provided the Receiver with the basis of his original TMI estimates but claims that expenses were paid by various related companies or with cash and therefore he cannot produce evidence of the actual expenses incurred.

26. Usman advised the Receiver that there is a lot of unopened mail relating to the business at 116's registered office address in King City, which he has never opened. Although requested, he has failed to turnover that mail to the Receiver.

27. During the initial November 14, 2023 meeting, Usman advised the Receiver that he had filed the annual HST returns to April 30, 2022 and was in the process of filing the April 30, 2023 return. He advised that no payments have ever been made to CRA for HST and he estimated the amount payable to be \$200,000. Despite requests for copies of returns and related records, Usman has provided no information to the Receiver.

28. Despite previous notifications from Usman that he has building related information such as certified floor plan measurements, architectural building plans, a documented fire safety plan etc., he has again failed to provide the Receiver with any such documents.

Access to Units

29. The 105 Lease contains a clause requiring a minimum notice period of 2 weeks for the landlord to gain access to the units. Usman has repeatedly enforced this clause whenever the Receiver sought access for realtor listing proposals, an appraisal, a building conditions site inspection, and building measurements and photos for the sales process which has delayed the receivership process. Furthermore, Usman is insisting that the Receiver and its realtor continue to abide by this clause throughout the sales process with respect to the showing of the Real Property to prospective purchasers. The Receiver contends that such a clause is not commercially reasonable and would not have been agreed to if the lease was entered into with an arms-length tenant. The Receiver requests that 105 and any and all sub-tenants be required to allow access to the Receiver and any or its agents or service providers within a maximum of 48 hour of a request.

30. The Receiver has recently received the report of CDW Engineering with respect to the building conditions and fire and life safety assessment. This report indicates many maintenance, inspection, fire plan and testing related deficiencies in the building which the Receiver is attending to remedy.

31. During CDW Engineering's inspection, despite assurances from Usman that full access would be granted for the inspection, he failed to allow complete access to the first and third

floors. Furthermore, units subject to the 105 Lease were found to have compressed gas cylinders stored onsite without proper authority which causes great concern and risk to the Receiver. The Receiver has requested Usman to remove the compressed gas cylinders from the Real Property, but to date has not received confirmation from him that this has been attended to.

RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

32. Attached hereto as **Appendix "C"** is a copy of the Receiver's Interim Statement of Receipts and Disbursements as at March 19, 2024 (the "**SRD**"), indicating net receipts of \$215,354.92.

CONCLUSIONS

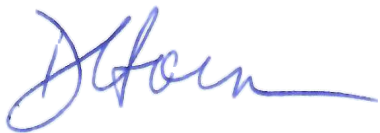
33. The conduct of Usman Khalid has been problematic since the commencement of the receivership. He has provided contradictory information and statements to the Receiver and has been frustrating the process citing a commercially unreasonable two-week access clause. He has failed to provide books and records relating to the business and the Real Property which is preventing the Receiver from providing required TMI reconciliations to 232, computing the CRA indebtedness and being in compliance with fire and life safety requirements.

RECOMMENDATION

34. For the reasons discussed in this First Report, the Receiver recommends that the Court grant the requested Order per paragraph 10.

The Receiver respectfully submits to the Court this First Report, dated March 20, 2024.

**MNP Ltd, in its capacity as the
Court-appointed Receiver of
11603531 Canada Inc.
and not in its personal or corporate capacity**

Per: 

Deborah Hornbostel *CPA, CA, CIRP, CFE, LIT*
Senior Vice President

APPENDIX “A”



Court File No. CV-23-00705867-00CL

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

THE HONOURABLE MR.)

TUESDAY, THE 14TH

JUSTICE CAVANAGH)

DAY OF NOVEMBER, 2023

BANK OF MONTREAL

Applicant

- and -

11603531 CANADA INC.

Respondent

APPLICATION UNDER SECTION 243(1) of the *BANKRUPTCY AND INSOLVENCY ACT* R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. c-43, AS AMENDED

**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. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 11603531 Canada Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day via zoom videoconference.

ON READING the affidavit of Leo Chun sworn September 7, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and such other counsel that were present as listed on the participant information sheet, no one appearing

for any other party on the service list although duly served as appears from the affidavit of service, filed, and on reading the consent of MNP Ltd. 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 service validated, as necessary, 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 Ltd. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor, including the real property described on Schedule A, acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

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

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

inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate and carry on the business of the Debtor, 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 Debtor;
- (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 Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (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 Debtor, 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 Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (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 \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; 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, including the real property described on schedule "A";
- (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 Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor 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 Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms,

corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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

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

with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on,

(ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that 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 Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge

(the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that 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 \$125,000 (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 "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission

shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this 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 Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any

other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. THIS COURT ORDERS that this Order is effective from the date it is made and is enforceable without any need for entry or filing.



Digitally signed by
Mr. Justice Cavanagh

Justice, Ontario Superior Court of Justice

Schedule "A"

REAL PROPERTY

The real property municipally known as 55 Dundas Street East, Toronto, Ontario M5B 1C6 and legally described as PT LT 21 W/S BOND ST, 22 W/S BOND ST PL 22A TORONTO AS IN CA734266; T/W CA734266; CITY OF TORONTO (PIN 21098-0106 (LT)).

Schedule "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "Receiver") of all assets, undertakings and properties of 11603531 Canada Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor (the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 14th day of November, 2023 (the "Order") made in an action having Court file number CV-23-00705867-00CL, 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 \$125,000 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 monthly not in advance on the last day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime rate of Bank of Montreal from time to time.

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued

by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the ____ day of _____, 20__.

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

Per: _____

Name:

Title:

BANK OF MONTREAL 11603531 CANADA INC.
and
Applicant Respondent

Court File No.: CV-23-00705867-00CL

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

Proceeding commenced at TORONTO

RECEIVERSHIP ORDER

MILLER THOMSON LLP
One London Place

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

Tony Van Klink LSO#: 29008M
Tel: 519.931.3509

Fax: 519.858.8511

Email: tvanklink@millerthomson.com

**Lawyers for the Applicant,
Bank of Montreal**

APPENDIX “B”



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: **CV-23-00705867-00CL**

DATE: **November 14, 2023**

REGISTRAR: **Teodoro Olaso**

NO. ON LIST: **3**

TITLE OF PROCEEDING: **Bank of Montreal vs. 11603531 Canada Inc.**

BEFORE JUSTICE: **Cavanagh, Justice Peter**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown, etc.:

Name of Person Appearing	Name of Party	Contact Info
Tony Van Klink	Bank of Montreal	tvanklink@millerthomson.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Howard Manis	11603531 Canada Inc.	hmanis@manislaw.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE CAVANAGH:

- (1) The Applicant brings this application for the appointment of a receiver.
- (2) The Respondent is in default in repayment of loans made to it by the Applicant. A Forbearance Agreement was signed to allow the Respondent additional time to refinance the loans. The forbearance period has expired. In the Forbearance Agreement, the Respondent consented to the making of a receivership order upon the conclusion of the forbearance period.
- (3) The Respondent seeks an adjournment of this application to give it more time to arrange re-financing.
- (4) I decline to adjourn the application.
- (5) I am satisfied that it is just and convenient for a receivership order to be made.
- (6) If the Respondent is able to arrange re-financing, it may confer with the Receiver about repayment of the Applicant's secured debt and, if suitable arrangements are made, the parties are at liberty to seek an order discharging the receiver.
- (7) Order to issue in form of Order signed by me today.

 Digitally signed
by Mr. Justice
Cavanagh

APPENDIX “C”

**In The Matter Of The Receiverships Of
11603531 Canada Inc.**

**Interim Statement of Receipts & Disbursements
As At March 19, 2024**

Receipts

Rent Collections	\$ 225,459.54
HST Collected	29,309.75
Interest Earned	1,170.52
Total Receipts	<u>255,939.81</u>

Disbursements

Property Taxes	15,139.00
Repairs, Maintenance and Site Inspections	8,328.06
Utilities	7,960.34
Insurance	6,449.99
HST Paid On Disbursements	2,253.70
Mail Redirection	378.50
Filing Fees	75.30
	<u>40,584.89</u>

Net Receipts

\$ 215,354.92

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) , THE DAY OF
)
) , 2024

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

11603531 CANADA INC.

Respondent

APPLICATION UNDER SECTION 243(1) of the *BANKRUPTCY AND INSOLVENCY ACT*
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE*
ACT, R.S.O. 1990, c. c-43, AS AMENDED

ORDER

THIS MOTION made by MNP Ltd., in its capacity as Court-appointed receiver and manager, without security, of all assets, undertakings, and properties of 11603531 Canada Inc. (the “**Debtor**”), including the real property at 55 Dundas Street East, Toronto, Ontario (the “**Property**”), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*, and pursuant to the terms of the Order of the Honourable Mr. Justice Cavanagh dated November 14, 2023 (the “**Receivership Order**”), for orders approving

the First Report of the Receiver dated March 20, 2024 (the “**First Report**”), and the actions of the Receiver therein, and compelling the Debtor to provide certain information or access pursuant to the First Report, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Receiver and the First Report, and on hearing submissions of counsel for the Receiver and such other parties in attendance at the hearing:

Service

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is hereby abridged so that this Motion is properly returnable this day and hereby dispenses with further service thereof.

Approval of Activities and Sealing Order

2. **THIS COURT ORDERS** that the First Report and the activities of the Receiver as set out in the First Report be and are hereby approved.

3. **THIS COURT ORDERS** that the Receiver’s Interim Statement of Receipts and Disbursements as at March 19, 2024, be and are hereby approved.

4. **THIS COURT ORDERS** that the confidential appendices to the Receiver’s First Report shall be sealed pending further order of this Honourable Court.

Compel Orders

5. **THIS COURT ORDERS** that Usman Khalid as director of the Debtor (“**Usman**”),

Gold Stock Corporation (“GSC”), and all tenants of any units located at the Property, shall provide access to the Property including any units therein to the Receiver and any of the Receiver’s service providers, including but not limited to realtors, within 48 hours of a request for access to the Property.

6. **THIS COURT ORDERS** that Usman, GSC, and 10587699 Canada Corp. (“105”) shall produce, within 48 hours of the date of this Order, all books, records, and documents related to the building (both electronic and hard copy), including, *inter alia*, all financial records, bank statements, disbursements, invoices, fire and safety records and plans, building drawings, keys, leases, and sub-leases with respect to the occupation of all units at the Property.

7. **THIS COURT ORDERS** that 105 or any other occupant of the Property (the “Occupants”) shall,

- a. remove, within 24 hours of this Order, all hazardous materials from the Property until such occupant(s) undertake(s) an audit in accordance with the Ontario Fire Code Part 5 “Hazardous Material, Processes and Operations” and obtains required approvals for the storage of such materials; and
- b. allow the Receiver and/or its services providers with immediate access thereafter to all units for inspection thereof to confirm removal.

8. **THIS COURT ORDERS** that, in the event of the Occupants non-compliance of paragraph 7(a) of this Order, the Receiver shall be authorized, but not obligated, to remove all hazardous materials from the Property and/or undertake an audit in accordance with the

Ontario Fire Code Part 5 “Hazardous Material, Processes and Operations” and obtain required approvals for the storage of such materials without any further notice to the Occupants, and without prejudice to the Receiver seeking any related cost and expenses of same from the Occupants, subject to further order of the Court.

BANK OF MONTREAL

Applicant

-and-

11603531 CANADA INC.

Respondent

Court File No.: CV-23-00705867-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER

SPETTER ZEITZ KLAIMAN PC

Barristers & Solicitors

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Lawyers for the Receiver, MNP Ltd.

BANK OF MONTREAL

Applicant

-and-

11603531 CANADA INC.

Respondent

Court File No.: CV-23-00705867-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

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