

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**BANK OF MONTREAL**

Applicant

and

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

Respondents

**FOURTH REPORT TO THE COURT SUBMITTED BY MNP LTD.,  
IN ITS CAPACITY AS RECEIVER OF THE ASSETS, UNDERTAKINGS AND PROPERTIES  
OF THE RESPONDENTS**

September 15, 2020

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**1.1 Introduction and Background**

- 1.1.1** On September 30, 2019, BDO Canada Ltd. (“**BDO**”) was appointed as receiver of the assets, undertakings and properties of 1254044 Ontario Limited (“**125**”), 2189788 Ontario Inc. (“**218**”), 1552838 Ontario Inc. (“**155**”) and other related parties on the application of Canadian Imperial Bank of Commerce.
- 1.1.2** On October 16, 2019, on the application of Bank of Montreal (“**BMO**”), MNP Ltd. replaced BDO as receiver of 125, 218 and 155 and was appointed as receiver of two additional related companies, 2431264 Ontario Inc. (“**243**”) and 2542372 Ontario Inc. (“**2542372**”) (the “**Initial Appointing Order**”).
- 1.1.3** On October 30, 2019, on the application of BMO, the Initial Appointing Order was amended (the “**Amended Appointing Order**”) to expand MNP Ltd.’s appointment as receiver to include additional companies indebted to BMO, either as direct borrowers or as guarantors of the BMO’s indebtedness. The companies added to the proceeding are 2034039 Ontario Inc. (“**203**”), 1786675 Ontario Limited (“**178**”), 2660556 Ontario Limited (“**266**”) and 2541899 Ontario Limited (“**2541899**” and collectively with the other companies subject to the receivership, the “**Companies**”).
- 1.1.4** A copy of the Amended Appointing Order (which includes the Initial Appointing Order) is attached as **Appendix A**.
- 1.1.5** The Companies’ principals are Simranjit Dhillon, Mandhir Dhillon, Sarbjit Dhillon and Mandeep Dhillon (the “**Dhillons**”).
- 1.1.6** The principal businesses of the Companies consist of motor vehicle diesel and gas fuelling stations and ancillary businesses (fast food restaurants and convenience stores) operating from three locations in Southwestern Ontario and a Burger King franchise restaurant located in Sarnia, Ontario.
- 1.1.7** On January 13, 2020, a sale process order was made by Justice Hainey. On June 11, 2020, orders were made by Justice Hainey approving three agreements made by the Receiver for the sales of the three fuelling station properties and assets, including the fuelling station and assets located at 5470 Walker Road, Windsor (the “**Walker Road Property**”).
- 1.1.8** There are two mortgages registered against the Walker Road Property: a first mortgage in favour of BMO securing the principal sum of \$7,250,000 (the “**BMO Mortgage**”) and a second mortgage in favour of a group of nine individuals and corporations (the “**Second Mortgagees**”) securing the principal sum of \$2,500,000. Under the sale approved by the court for the Walker Road Property, BMO would suffer a shortfall and there would be no recovery under the second mortgage.
- 1.1.9** The sale of the Walker Road Property was scheduled to be completed on June 23, 2020, being the first business day after the approval and vesting order was to become final. On June 22, 2020, a notice of appeal from the approval and vesting order was filed by 2323583 Ontario Inc. (“**232 Ontario**”), one of the Second Mortgagees of the Walker Road Property. As a result of the filing of the notice of appeal, the sale of the Walker Road Property was not completed on the scheduled closing date.
- 1.1.10** On July 9, 2020, the BMO Mortgage was assigned to 232 Ontario and the appeal was abandoned.

- 1.1.11** The sale agreement (the “**Sale Agreement**”) for the Walker Road Property provides that the Receiver’s obligation to complete the transaction is conditional upon the BMO Mortgage not having been assigned to one or more of the Second Mortgagees prior to closing. That provision was included in the Sale Agreement to permit the Second Mortgagees to protect their investment and interest in the Walker Road Property by taking over the BMO Mortgage if they wished to do so. In the event that the condition was not satisfied as of the closing date, i.e. if the BMO Mortgage was assigned to the Second Mortgagees before closing, the Sale Agreement permits the Receiver to either terminate the Sale Agreement or waive the condition and complete the sale transaction.
- 1.1.12** The funds for the assignment of the BMO Mortgage to 232 Ontario were provided by 2071342 Ontario Inc. (“**207 Ontario**”). Immediately upon the BMO Mortgage being assigned to 232 Ontario, the BMO Mortgage was sold by 232 Ontario to 207 Ontario. 207 Ontario is related to or affiliated with 2144639 Ontario Inc. (“**214 Ontario**”). On June 10, 2020 (the day prior to the sale approval motion), 214 Ontario submitted an offer to the Receiver to purchase the Walker Road Property, which offer was not accepted.
- 1.1.13** The Sale Agreement has not yet been completed or terminated. Instead, the Receiver advised the affected parties of the Receiver’s intention to seek directions from the court as to whether the Receiver should terminate or complete the Sale Agreement. The Receiver and the purchaser agreed to extend the sunset date in the Sale Agreement to permit this motion to be brought.

## **1.2 Purpose of the Receiver’s Fourth Report**

- 1.2.1** This constitutes the Receiver’s Fourth Report to the Court (the “**Fourth Report**”) in this matter and is filed in support of the Receiver’s motion for directions on whether the Receiver should complete or terminate the Sale Agreement.

## 2.0

## *The Sale Process Order*

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- 2.1.1 Pursuant to the Amended Appointing Order, the Receiver was authorized to market the assets and operations of the Companies, including advertising and soliciting offers and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- 2.1.2 In its First Report the Receiver outlined the Sales Solicitation Process (“SSP”) to be undertaken by the Receiver to market and solicit offers for the assets of the Companies, including the Walker Road Property. On January 13, 2020, Justice Hainey made an order approving the SSP (the “**Sale Process Order**”). A copy of the Sale Process Order is attached as **Appendix B**.
- 2.1.3 No objection was raised to the making of the Sale Process Order by any party, including the Second Mortgagees.

## 3.0

## *The Sale Agreement*

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- 3.1.1** The Receiver marketed and solicited offers for the Walker Road Property in accordance with the Sale Process Order. Three offers were received for the Walker Road Property, each of which would have resulted in a shortfall to BMO and no recovery for the Second Mortgagees.
- 3.1.2** During the sale process the Second Mortgagees expressed an intention to pay out the BMO Mortgage if the sale process did not produce an offer sufficient to repay their second mortgage. On February 24, 2020, Receiver's counsel sent an email to the lawyer for the Second Mortgagees to advise of the results of the sale process and the Receiver's intention to seek court approval for the highest offer received for the Walker Road Property from the sale process. The email went on to state

I understand that your clients have previously expressed an intent to pay out the BMO mortgage if the sale process did not produce an offer sufficient to repay your clients' mortgage. I am advising you of the foregoing at this time so that your clients may consider whether they wish to pay out the BMO mortgage to protect their interest in the property.

The Receiver will not accept an offer for the property which does not have the support of the first mortgagee. If your clients take over the BMO mortgage, the Receiver would not accept an offer for the property without your clients' support. If your clients take over the BMO mortgage, it may be appropriate to remove 5470 Walker Road from the scope of the MNP receivership to permit your clients to deal with the property themselves under the mortgages.

The offers under the sale process are open for acceptance until this Wednesday by the Receiver. Once the offer is accepted, the Receiver will be obliged to seek court approval of the sale. If your clients are interested in taking over the BMO mortgage, they will have to move quickly (by the end of the day tomorrow) as the landscape for them does change once there is an accepted offer.

A copy of that email is attached as **Appendix C**.

- 3.1.3** The Second Mortgagees did not take over the BMO Mortgage. Accordingly, the Receiver accepted the highest offer from the sale process and negotiated the Sale Agreement with the purchaser. A copy of the Sale Agreement with the purchase price redacted is attached as **Appendix D**.
- 3.1.4** The Sale Agreement was signed on March 12, 2020. The Receiver negotiated the inclusion of a condition (the "**Assignment Condition**") in the Sale Agreement which made the Receiver's obligation to complete the Sale Agreement conditional upon the BMO Mortgage not being assigned to one or more of the Second Mortgagees prior to closing. The inclusion of that condition was negotiated by the Receiver to permit the Second Mortgagees the opportunity to protect their investment by purchasing the BMO Mortgage and thereby taking effective control of the Property if they wished to do so.
- 3.1.5** On March 15, 2020, Receiver's counsel sent an email to the lawyer for the Second Mortgagees advising of the inclusion of the Assignment Condition in the Sale Agreement. A copy of that email is attached as **Appendix E**.



## 4.0

## *The Sale Approval Motion*

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- 4.1.1 On May 7, 2020, the Receiver's motion record for court approval of the Sale Agreement was served on the service list in the receivership proceeding, including the lawyer of record for the Second Mortgagees.
- 4.1.2 The sale approval motion was originally returnable on May 28, 2020. Shortly prior to the return date of the motion, counsel for Canadian Imperial Bank of Commerce raised a potential concern that the purchaser of the Walker Road Property may be associated with the Dhillons. The motion was adjourned to June 11, 2020 to permit the Receiver and its counsel time to make inquiries regarding same.
- 4.1.3 Based on the inquiries made and statutory declarations obtained by the Receiver from the principals of the purchaser, the Receiver was satisfied that the purchaser was acting independent of the Dhillons and was using its own funds to complete the purchase.
- 4.1.4 On June 9, 2020, the lawyer of record for the Second Mortgagees sent an email to Receiver's counsel advising that he had been instructed to not oppose the sale approval motion and would not be attending on the hearing. A copy of that email is attached as **Appendix F**.
- 4.1.5 On June 10, 2020, another lawyer, Chris Besant of Gardiner Roberts, advised Receiver's counsel that he was trying to firm up a retainer from one of the Second Mortgagees and, if retained, would be opposing approval of the sale of the Walker Road Property. Mr. Besant later advised that the Second Mortgagee may be attending the sale approval motion on his own.
- 4.1.6 At approximately 10:30 p.m. in the evening before the hearing of the sale approval motion, an unsolicited offer was received by counsel for the Receiver from 214 Ontario to purchase the Walker Road Property from the Receiver. A copy of that offer with the purchase price redacted is attached as **Appendix G**. Receiver's counsel advised the lawyer for 214 Ontario that the offer was too late in the process, would not be accepted and the Receiver would be seeking court approval of the Sale Agreement.
- 4.1.7 The sale approval motion was heard by Justice Hainey on June 11, 2020. No materials were filed by any party other than the Receiver.
- 4.1.8 Several of the Second Mortgagees attended the hearing of the sale approval motion by videoconference. Predrag Milkovic ("Milkovic") was their spokesperson. Milkovic is the principal of 232 Ontario.
- 4.1.9 On the motion before Justice Hainey, Milkovic objected to the making of the approval and vesting order for the Walker Road Property. No objection was made by any other party. Milkovic's primary complaint seemed to be that one of the Second Mortgagees (he did not say who) had joined forces and was working with the purchaser under the Sale Agreement.
- 4.1.10 Justice Hainey was advised of the unsolicited offer received the prior evening. The unsolicited offer was for an amount which exceeded the purchase price in the Sale Agreement but would still result in a shortfall on the BMO Mortgage and not produce any recovery for the Second Mortgagees. BMO supported the completion of the Sale Agreement. The Receiver recommended to the court that the Sale Agreement be approved.

**4.1.11** The Sale Agreement was approved by Justice Hainey and the approval and vesting order was granted.

## 5.0

## *Mr. Milkovic's Allegation*

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- 5.1.1** Following the sale approval motion, Receiver's counsel spoke with Milkovic by telephone on June 15, 2020. Milkovic identified Jagdev Dhaliwal ("**Dhaliwal**") as the Second Mortgagee that he was alleging was working with the purchaser of the Walker Road Property. Milkovic advised that Dhaliwal had agreed to contribute funds to permit the Second Mortgagees to obtain an assignment of the BMO Mortgage, but in late May/early June had backed away from that commitment. Milkovic believed that Dhaliwal backed away because he had made a deal with the purchaser of the Walker Road Property to include him in their purchase. Milkovic did not provide anything to substantiate his belief, but provided the contact information for Dhaliwal.
- 5.1.2** Receiver's counsel spoke with Dhaliwal by telephone on June 15, 2020. Dhaliwal denied any involvement with the purchaser and asked rhetorically why a purchaser which had the Walker Road Property tied up since early March would cut him in to their purchase. Dhaliwal explained to Receiver's counsel that in the weeks prior to the hearing of the sale approval motion, the Second Mortgagees were trying to raise the funds required to obtain an assignment of the BMO Mortgage, but were unable to do so after some of the Second Mortgagees withdrew their commitments to provide funds for the assignment. Replacement funds were solicited by Milkovic through the Dhillons. Dhaliwal provided Receiver's counsel with copies of emails confirming what he had told Receiver's counsel. A copy of those emails is attached as **Appendix H**.

- 6.1.1** Under the terms of the Sale Agreement, the sale transaction was to be completed on June 23, 2020, the first business day after the approval and vesting order was to become final. The Receiver and the purchaser were both ready, willing and able to complete the sale transaction as of June 23, 2020.
- 6.1.2** On June 22, 2020, 232 Ontario filed a notice of appeal (the “**Notice of Appeal**”) from the approval and vesting order for the Walker Road Property. A copy of the Notice of Appeal is attached as **Appendix I**.
- 6.1.3** As a result of the filing of the Notice of Appeal, the sale of the Walker Road Property pursuant to the Sale Agreement was not completed on June 23, 2020.
- 6.1.4** In its notice of appeal, 232 Ontario relied upon ss. 193(a) of the *Bankruptcy and Insolvency Act* (the point at issue involves future rights) and ss. 193(c) (the property involved in the appeal exceeds in value \$10,000) as the basis for its intended appeal and did not seek leave to appeal. The Receiver and its counsel formed the view that 232 Ontario did not have an automatic right of appeal under s. 193 of the *Bankruptcy and Insolvency Act* and that leave to appeal was required. On June 30, 2020, the Receiver served a motion with the Court of Appeal for declarations that there was no right of appeal with respect to the approval and vesting order pursuant to s. 193 of the *Bankruptcy and Insolvency Act* and that the approval and vesting order was not stayed by the filing of the Notice of Appeal. The motion was scheduled for hearing before a single judge of the Court of Appeal on July 10, 2020. A copy of the Notice of Motion is attached as **Appendix J**.
- 6.1.5** On July 9, 2020, the appeal was abandoned, rendering the Receiver’s motion moot.

## 7.0

## *Assignment of the BMO Mortgage*

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- 7.1.1 On July 9, 2020, the BMO Mortgage was assigned by BMO to 232 Ontario. A copy of the assignment agreement (the “**Assignment Agreement**”) dated July 2, 2020 made between BMO and 232 Ontario with the assignment price redacted is attached as **Appendix K**. References to the assignment amount in the other appendices to this Report have also been redacted. The Assignment Agreement is dated July 2, 2020, but counsel for BMO and 232 Ontario have confirmed that the funds for the assignment were paid and the assignment was completed on July 9, 2020.
- 7.1.2 The Assignment Agreement provides that in exchange for the payment of the assignment price by 232 Ontario to BMO, BMO assigned to 232 Ontario the BMO Mortgage, together with other ancillary guarantee and security documents, and a portion of the approximately \$7.5 million owing to BMO and secured under the BMO Mortgage equal to the amount of the assignment price.
- 7.1.3 BMO, 232 Ontario and 207 Ontario executed a letter agreement dated July 2, 2020 (the “**Letter Agreement**”) with respect to the Assignment Agreement. A copy of the Letter Agreement is attached as **Appendix L**.
- 7.1.4 The Receiver was aware that BMO and 232 Ontario were discussing the possible assignment of the BMO Mortgage. The Receiver made it known to BMO, 232 Ontario and the purchaser that in the event that the BMO Mortgage was assigned, the Receiver would be seeking directions from the court on whether the Receiver should terminate or complete the Sale Agreement. The Letter Agreement addresses the impact on the Assignment Agreement in the event that the court directs the Receiver to complete or terminate the Sale Agreement. In the event that the court directs the Receiver to terminate the Sale Agreement, the Assignment Agreement will remain in effect. In the event that the court directs the Receiver to complete the Sale Agreement, the amount paid for the Assignment Agreement will be returned by BMO and the Assignment Agreement will cease to be effective.
- 7.1.5 In connection with the completion of the assignment, Milkovic and Brijindr Pal Singh Bhullar (“**Bhullar**”) provided statutory declarations to BMO, copies of which are attached as **Appendix M** and **Appendix N**, respectively.
- 7.1.6 Bhullar is a principal of 207 Ontario. The Bhullar statutory declaration provides, among other things, as follows:
- (a) that 207 Ontario was advancing by way of loan to a group of the Second Mortgagees all of the funds required by them to obtain the assignment of the BMO Mortgage;
  - (b) that once the BMO Mortgage was assigned to the Second Mortgagees group, 207 Ontario would be taking an assignment of the BMO Mortgage as security for the loan;
  - (c) 207 Ontario and/or its affiliates had made an offer to acquire the Walker Road Property during the receivership marketing process, but the offer was rejected;
  - (d) the Dhillons are not affiliated with 207 Ontario and 207 Ontario was not acting on behalf of the Dhillons; and
  - (e) the BMO Mortgage was being acquired by the Second Mortgagees group using the proceeds of the loan, and ownership would be shared between them.

**7.1.7** The lawyer for 207 Ontario, Paul Mand, has confirmed that the offer referred to in paragraph 6(ii) of the Bhullar statutory declaration (the offer which Bhullar states was made to acquire the Walker Road Property during the receivership marketing process but which was rejected) is the offer made by 214 Ontario the evening prior to the hearing date for the sale approval motion.

**7.1.8** The Milkovoic statutory declaration provides, among other things, as follows:

- (a) a group comprising eight of the nine Second Mortgagees (the “**Second Mortgagees Group**”) wished to acquire the BMO Mortgage either directly or through 232 Ontario on their behalf;
- (b) that he had arranged for a lender, 207 Ontario, to fund the purchase of the BMO Mortgage by the Second Mortgagees Group and that 207 Ontario would be advancing to the Second Mortgagees Group all of the amount required to fund the acquisition and taking an assignment of the BMO Mortgage as security for the loan;
- (c) the BMO Mortgage was being acquired directly by the Second Mortgagees Group, and ownership was to be shared between them; and
- (d) the Dhillons would not have any direct or indirect interest in the BMO Mortgage once acquired by the Second Mortgagees Group.

**7.1.9** Through counsel, the Receiver requested a copy of the loan agreement between 207 Ontario and the Second Mortgagees Group and confirmation whether the Second Mortgagees were party to any other agreement(s) respecting the assignment of the BMO Mortgage. In response to that request, a single agreement was provided, being a mortgage loan sale agreement (the “**MLSA**”) dated July 2, 2020 between 207 Ontario and the Second Mortgagees Group. A copy of the MLSA is attached as **Appendix O**.

**7.1.10** The MLSA does not provide for an advance of funds, an interest rate, repayment terms or security. Instead, the MLSA,

- (a) confirms that 207 Ontario paid directly to BMO on behalf of the Second Mortgagees Group the amount required to be paid to BMO as consideration for the Assignment Agreement and that 207 Ontario had irrevocably purchased and assumed from the Second Mortgagees Group the BMO Mortgage together with the other assets assigned by BMO to the Second Mortgagees Group under the Assignment Agreement; and
- (b) confirms the conditional agreement of 207 Ontario to purchase the second mortgage against the Walker Road Property from the Second Mortgagees Group for \$1 million provided the Sale Agreement is terminated by the Receiver.

**7.1.11** On July 11, 2020 Dhaliwal sent an email to the Receiver’s counsel, and others, alleging that the Dhillons were part of the “deal” for the assignment of the BMO Mortgage. Included with that email were a series of emails from early June, 2020 respecting efforts being made by the Second Mortgagees to raise funds to take an assignment of the BMO Mortgage, some of which make reference to the potential involvement of the Dhillons. A copy of that email is attached as **Appendix P**.

**7.1.12** Through counsel, the Receiver made inquiries of 207 Ontario respecting the source of the funds paid to obtain the assignment of the BMO Mortgage, the relationship between 207 Ontario and 214

Ontario and whether 207 Ontario is a party to any agreement, other than the MLSA, respecting the assignment of the BMO Mortgage. The responses provided were as follows:

- (a) the funds for the assignment of the BMO Mortgage were provided by Bhullar;
- (b) the principals of 207 Ontario and 214 Ontario are business associates who often co-invest and participate in business ventures together; and
- (c) there are no other agreements to which 207 Ontario is a party respecting the assignment of the BMO Mortgage.

A copy of the request and responses provided is attached as **Appendix Q**.

**8.1.1** Section 4.2 of the Sale Agreement reads as follows:

## 4.2 Conditions for the Benefit of the Vendor:

The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

...

- (d) Bank of Montreal Charge: the Bank of Montreal Charge shall not have been assigned to the Second Mortgagee.

The conditions contained in this Section 4.2 hereof are inserted for the exclusive benefit of the Vendor and may be waived in whole or in part by the Vendor at any time without prejudice to any of the Vendor's rights of termination in the event of non-performance of any other condition in whole or in part. If any of the conditions contained in Section 4.2 hereof are not fulfilled or complied with at or prior to the Time of Closing, the Vendor may terminate this Agreement by notice in writing to the Purchaser.

**8.1.2** The assignment of the BMO Mortgage to 232 Ontario engages the condition in section 4.2(d) of the Sale Agreement. The condition in section 4.2(d) does not result in the automatic termination of the Sale Agreement: the condition may be waived by the Receiver and the Sale Agreement completed or the Receiver may terminate the Sale Agreement.

**8.1.3** The Receiver seeks directions from the court as to whether it should be exercising its right to terminate the Sale Agreement or waiving the condition and completing the Sale Agreement.

**8.1.4** Subsection 4.2(d) was included in the Sale Agreement because the Second Mortgagees voiced concern with the Receiver completing a transaction which would result in no recovery for the Second Mortgagees. Section 4.2(d) of the Sale Agreement was intended to permit the Second Mortgagees to protect their investment by becoming the first mortgagee, as there would be no reason for the Receiver to complete a sale of the Walker Road Property over the objection of the first mortgagee for an amount less than what was owing under the first mortgage.

**8.1.5** In a receivership, the interests of the creditors are paramount. Terminating the Sale Agreement will maximize the recovery for BMO and the Second Mortgagees.

**8.1.6** The interests of the purchaser under the Sale Agreement are to be considered, but the purchaser's interest is defined by the terms of the Sale Agreement. The purchaser agreed as a term of the Sale Agreement that the Receiver's obligation to complete the sale transaction was subject to the BMO Mortgage not being assigned prior to closing.

**8.1.7** The Bhullar and Milkovic statutory declarations indicate that 207 Ontario was providing a loan to the Second Mortgagees to facilitate their acquisition of the BMO Mortgage, with the BMO Mortgage to be assigned by the Second Mortgagees to 207 Ontario by way of security. The MLSA provides that 207 Ontario paid the funds for the assignment of the BMO Mortgage directly to BMO on behalf of the Second Mortgagees and for the irrevocable purchase and assumption by 207 Ontario of the BMO Mortgage from the Second Mortgagees. The MLSA does not refer to a loan made by 207 Ontario to the Second Mortgagees. The MLSA contains an "entire agreement" clause.



- 8.1.8** Terminating the Sale Agreement potentially undermines the integrity of the court approved sale process. In the evening before the sale approval motion, 214 Ontario submitted an offer to purchase the Walker Road Property. That offer was considered by the Receiver to be too late in the process and was not accepted. Through the MLSA, 207 Ontario (an affiliate of 214 Ontario) has acquired effective control of the Walker Road Property. Terminating the Sale Agreement may be seen as permitting 207 Ontario to circumvent the sale process approved by the court.
- 8.1.9** The Receiver recommends to the court that directions be provided to the Receiver to exercise its right to terminate the Sale Agreement for the following reasons:
- (a) the Assignment Condition was included in the Sale Agreement for the purpose of permitting the Second Mortgagees to protect their interest;
  - (b) the purchaser agreed to the inclusion of the Assignment Condition in the Sale Agreement and assumed the risk which the Assignment Condition presented to the completion of the sale transaction;
  - (c) the Assignment Condition benefitted the purchaser by neutralizing any objection which might be made by the Second Mortgagees to the sale price on the sale approval motion and by assisting in obtaining court approval for the Sale Agreement;
  - (d) terminating the Sale Agreement will result in a greater recovery to BMO and the Second Mortgagees than completing the Sale Agreement;
  - (e) the condition in the Sale Agreement requires only that the BMO Mortgage be assigned before closing to one or more of the Second Mortgagees. That condition has been met. The condition does not prevent the further assignment of the BMO Mortgage by the Second Mortgagees or require the Second Mortgagees to continue to hold the BMO Mortgage for any minimum period of time; and
  - (f) if viewed from the perspective of 207 Ontario, the MLSA and the assignment of the BMO Mortgage to 232 Ontario may be seen as an attempt to circumvent the court approved sale process by allowing 207 Ontario to obtain control of the Walker Road Property outside of that sale process and after the offer made by 214 Ontario to purchase the Walker Road Property was rebuffed. However, when viewed from the perspective of the Second Mortgagees, the transaction between 207 Ontario and the Second Mortgagees on its own does not raise the same concern: the transaction protected the interests of the Second Mortgagees, which was the very purpose for the inclusion of the Assignment Condition in the Sale Agreement.

We submit this Fourth Report to the Court and respectfully request that the Court provide directions to the Receiver to terminate the Sale Agreement in accordance with section 4.2 of the Sale Agreement.

All of which is respectfully submitted this 15th day of September, 2020.

**MNP Ltd. in its capacity as Receiver of  
1254044 Ontario Limited, 2431264 Ontario Inc., 2189788 Ontario Inc.,  
1552838 Ontario Inc., 1786675 Ontario Limited, 2034039 Ontario Inc., 2660556 Ontario  
Limited, 2541899 Ontario Limited, 2542372 Ontario Inc.**



Per: Robert W. Smith CPA, CA, CIRP, LIT  
Senior Vice President