

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

)

MONDAY, THE 13TH

JUSTICE

)

DAY OF JANUARY, 2020

*HAINES*

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BETWEEN

**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

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**ORDER  
(Re Sale Process)**

THIS MOTION, made by MNP Ltd., in its capacity as the Court-appointed receiver (the "Receiver") of the assets, undertakings and properties 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, and 2542372 Ontario Inc. (the "Debtors"), for an order,

- (a) if necessary, abridging the time for and validating service of the notice of motion and motion record, including the First Report of the Receiver to the Court dated December 20, 2019 (the "First Report"), and directing that any further service of the notice of motion and the motion record be dispensed with such that this motion is properly returnable on January 13, 2020;

- (b) approving the First Report and the conduct and activities of the Receiver reported therein;
- (c) approving the marketing and sales process for the assets of the Debtors as described in section 3.0 of the First Report, subject to such amendments to the Sale Process as deemed necessary or appropriate by the Receiver (the "Sale Process");
- (d) declaring that the following rights of first refusal (the "Rights of First Refusal") do not apply to any offers made to the Receiver pursuant to the Sale Process and that the Receiver is at liberty to enter into agreement(s) of purchase and sale for the Assets (as defined in paragraph 3.1.5 of the First Report) pursuant to the Sale Process without complying with the terms of the Rights of First Refusal:
  - (i) right of first refusal in Section 14.4 of the Subfranchise Agreement dated March 13, 2015 made between Redberry Franchising Corp., as subfranchisor, and 2431264 Ontario Inc., as franchisee;
  - (ii) right of first refusal in Section 14.3 of the Franchise Agreement dated January 18, 2017 made between BK Canada Service ULC, as franchisor, and 2542372 Ontario Inc., as franchisee;
  - (iii) right of first refusal in Section 5 of the Motor Fuel Supply Agreement Esso Branded Motor Fuels made October 1, 2013 (but effective as of September 1, 2013) between Pioneer Energy LP, as distributor, and 1254044 Ontario Limited, as dealer;
  - (iv) right of first refusal in Section 5 of the Motor Fuel Supply Agreement Esso Branded Motor Fuels made October 1, 2013 (but effective as of September 1, 2013) between Pioneer Energy LP, as distributor, and 2189788 Ontario Inc., as dealer; and
  - (v) right of first refusal in Sections 13, 14 and 15 of the Agreement of Lease dated November 5, 2018 made between 2541899 Ontario Limited, as lessor, and Parkland Fuel Corporation, as lessee.
- (e) approving the Receiver's statement of receipts and disbursements for the period October 16, 2019 to November 30, 2019;

- (f) approving the professional fees of the Receiver and its legal counsel; and
- (g) such further and other relief as counsel may advise and this Honourable Court may deem just,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, and such other persons on the Service List as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of service of Margaret Henderson sworn December 30, 2019, filed:

1. THIS COURT ORDERS that the time for and method of service of the notice of motion and the motion record, including the First Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof;
2. THIS COURT ORDERS that the First Report and the activities and conduct of the Receiver described in the First Report be and are hereby approved.
3. THIS COURT ORDERS that the Sale Process (subject to such amendments to the Sale Process as deemed necessary or appropriate by the Receiver) for the Assets be and is hereby approved and that the terms and conditions for the submission of offers pursuant to the Sale Process substantially in the form attached as Appendix "A" to the Confidential Information Memorandum attached as Appendix "K" to the First Report be and are hereby approved; and the Receiver is hereby authorized to take such steps as it considers necessary to carry out the Sale Process, subject to prior approval of this Court being obtained before completion of any transaction(s) resulting from the Sale Process.
4. THIS COURT DECLARES that the Rights of First Refusal do not apply to any offers made to the Receiver pursuant to the Sale Process and that the Receiver is at liberty to enter into agreement(s) of purchase and sale for the Assets pursuant to the Sale Process without complying with the terms of the Rights of First Refusal;
5. THIS COURT ORDERS that, save and except for gross negligence or wilful misconduct on its part, the Receiver shall not have any personal or corporate liability in connection with offering for sale the Debtors right, title and interest in the Assets, including, without limitation:



- (a) by advertising either or both the Assets and the Sale Process, if at all, including, without limitation, the opportunity to acquire the Assets;
- (b) by exposing or not exposing the Assets to any and all parties, including, without limitation, those which have made their interest known to the Receiver;
- (c) by carrying out the Sale Process;
- (d) by responding to any and all requests or enquiries in regards to due diligence conducted in respect of the Assets;
- (e) through the disclosure of any and all information presented by any of the Receiver, its solicitors and its agents, arising from, incidental to or in connection with the Sale Process;
- (f) pursuant to any and all offers received by the Receiver in accordance with the Sale Process; and
- (g) pursuant to any agreements entered into by the Receiver in respect of the sale of any of the Assets.

6. THIS COURT ORDERS that the Receiver's statement of receipts and disbursements for the period October 16, 2019 to November 30, 2019 is hereby approved; and

7. THIS COURT ORDERS that the professional fees of the Receiver and its legal counsel as set out in the fee affidavits of Rob Smith sworn December 20, 2019 and Sherry Kettle sworn December 23, 2019 be and are hereby approved.

8. 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.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JAN 13 2020

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PER / PAR:



BANK OF MONTREAL

and

Applicant

1254044 ONTARIO LIMITED, et al.

Respondents

Court File No: CV-19-00629058-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER**

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