

**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

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

August 14, 2020

# *Table of Contents*

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	<u>Page</u>
1.0 Introduction and Purpose of Report .....	1
1.1 Introduction and Background .....	1
1.2 Purpose of the Receiver's Third Report.....	2
2.0 Sale Solicitation Process .....	3
3.0 Sale of Assets.....	5
3.1 Proposed Sales .....	5
4.0 Order Sought.....	6

# *Listing of Appendices*

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- Appendix A - Amended Appointing Order dated October 30, 2019
- Appendix B - Summary of Companies, operations, locations and parties having security over the Companies assets
- Appendix C - First Report (without appendices)
- Appendix D - Sale Process Order dated January 13, 2020
- Appendix E - Second Report (without appendices)
- Appendix F - Redacted copy of the Agreement of Purchase and Sale with Tanveer Pahal
- Appendix G - Amending Agreement
- Appendix H - *PPSA* Search against 2542372 Ontario Limited

## 1.0

## Introduction and Purpose of Report

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### 1.1 Introduction and Background

**1.1.1** On September 30, 2019, by Order of the Honourable Justice Hainey on application made by the Canadian Imperial Bank of Commerce (“**CIBC**”), BDO Canada Ltd. (“**BDO**”) was appointed receiver of the assets, undertakings and properties of 1254044 Ontario Limited (“**125**”), 2189788 Ontario Inc. (“**218**”), 1552838 Ontario Inc. (“**155**”) and other related entities not named in this proceeding (the “**September 30 Appointing Order**”). The CIBC application record has been sealed pending further order of this Court.

**1.1.2** Bank of Montreal (“**BMO**”), the senior secured lender of 125 and 218, brought a motion to replace BDO and appoint MNP as Receiver of 125, 218 and 155. BMO’s motion was unopposed and the Honourable Justice Hainey granted an Order on October 16, 2019 discharging BDO and appointing MNP as receiver of 125, 218, 155 and two additional related party entities, 2431264 Ontario Inc. (“**243**”) and 2542372 Ontario Inc. (“**2542372**”) (the “**Initial Appointing Order**”). The Initial Appointing Order is substantially in the form of the model receivership order.

**1.1.3** By further order dated October 30, 2019 on a subsequent application by BMO, the Honourable Justice Hainey amended the Initial Appointing Order to expand MNP’s appointment to include additional entities indebted to BMO, or guarantors of BMO’s indebtedness. The entities added to the proceeding are 2034039 Ontario Inc. (“**203**”), 1786675 Ontario Limited (“**178**”), 2660556 Ontario Limited (“**266**”) and 2541899 Ontario Limited (“**2541899**”) (the “**Amended Appointing Order**”).

(collectively referred to in this report, along with those companies included in the Initial Appointing Order, as the “**Companies**”).

**1.1.4** A copy of the Amended Appointing Order, including 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.

**1.1.6** Attached as **Appendix B** is a listing of the Companies, including a description of operations, location and the parties having security over the Companies’ assets.

**1.1.7** The principal businesses operate from four locations throughout Southwestern Ontario as follows:

- (i) 5906 Oil Heritage Road, Wyoming Ontario (“**Oil Heritage Road**”);
- (ii) 1527 and 1537 Provincial Road, Windsor Ontario (“**Provincial Road**”);
- (iii) 5407 Walker Road, Windsor Ontario (“**Walker Road**”); and
- (iv) 203 Indian Road, Sarnia Ontario (“**Indian Road**”)

**1.1.8** BMO is the senior secured lender to the Companies. In aggregate, the Companies are indebted to BMO for approximately \$27 million. BMO holds mortgages over the Real Properties together with General Security Agreements from each of the Companies.

**1.1.9** The Receiver submitted two previous reports to the Court. The first report dated December 20, 2019 (the “**First Report**”), without appendices, is attached as **Appendix C**. The First Report was submitted in support of the Receiver’s motion for, among other things, approval of a sale process for the Real Properties and the assets of the businesses carried on by the Companies from the Real Properties. A copy of the Order of Justice Hainey dated January 13, 2020 approving the First Report and the sale process is attached as **Appendix D** (the “**Sale Process Order**”).

**1.1.10** The second report dated May 1, 2020 (the “**Second Report**”), without appendices, is attached as **Appendix E**. The Second Report was submitted in support of the Receiver’s motion for, among other things, approval of the sale of the assets used in the businesses at Oil Heritage Road, Provincial Road and Walker Road. Orders approving the sales and other ancillary relief as set out in the Second Report were made on June 11, 2020.

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

**1.2.1** This constitutes the Receiver’s Third Report to the Court (the “**Third Report**”) in this matter and is filed in support of the Receiver’s motion for Orders:

- (i) approving the Third Report and the activities and conduct of the Receiver described therein;
- (ii) approving the Agreement of Purchase and Sale dated June 10, 2020 between the Receiver, as vendor, and Tanveer Pahal (“**Pahal**”), as purchaser, in respect of the assets of 2542372 used in the operation of the Burger King restaurant business from Indian Road (the “**Indian Road Assets**”) and authorizing the Receiver to complete the transaction contemplated therein (the “**Indian Road Transaction**”); and,
- (iii) vesting in Pahal the Indian Road Assets free and clear of all encumbrances other than permitted encumbrances; and
- (iv) sealing the Confidential Supplement to the Third Report.

## 2.0

## Sale Solicitation Process and subsequent offers

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### 2.1 Sale Solicitation Process

- 2.1.2** 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. The Companies' assets are comprised of real estate, leasehold improvements, restaurant equipment, inventory (fuel, foodstuffs and convenience store items), franchise rights and business goodwill (collectively the "Assets").
- 2.1.3** 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. The SSP was approved by the Court in the Sale Process Order (Appendix D).
- 2.1.4** Pursuant to the SSP, the Receiver undertook the following steps to market and solicit offers for the Assets:
- On December 17, 2020, the Receiver emailed an Invitation for Proposals to 129 potential interested parties including domestic and international industry participants and equity investment firms identified by the Receiver and MNP Corporate Finance Ltd;
  - The Receiver advertised the Invitation for Proposals in the financial section of the national edition of the Globe & Mail, London Free Press and Windsor Star on Friday January 10, 2020;
  - The Receiver notified more than 650 MNP partners across Canada of the SSP and provided a copy of the Invitation for Proposals for distribution to MNP clients that may be interested in the opportunity; and
  - The Receiver published a notice of the SSP in the Insolvency Insider, a weekly email publication circulated within the national insolvency industry.
- 2.1.5** As a result of the marketing described above, 38 parties executed confidentiality agreements and were provided a copy of the Receiver's confidential information memorandum detailing the opportunity. A virtual data room with additional information was set up by the Receiver and interested parties were granted access.
- 2.1.6** The Receiver responded to queries and information requests of all interested parties in a timely and efficient manner.
- 2.1.7** The deadline to submit offers was established as 2:00 p.m. on Wednesday, February 12, 2020 ("**Original Bid Deadline**"). The Original Bid Deadline provided prospective bidders eight weeks to complete due diligence and submit an offer.
- 2.1.8** The Receiver's marketing campaign resulted in 13 en bloc and location specific offers being received by the Original Bid Deadline, with multiple offers for each location. Of the offers received, five included the Indian Road Assets. The Indian Road Assets consist of chattels, the lease for the restaurant premises, contracts which the purchaser wishes to assume (including the Burger King franchise agreement), inventory and warranty rights.
- 2.1.9** Having regard to the multiple competing en bloc and location specific offers, on February 18, 2020, the Receiver contacted offerors to advise that the Original Bid Deadline was being extended to 2:00 pm on Friday February 21, 2020 ("**Second Bid Deadline**"), and requested offerors to revisit their offers and lodge their final and best offer by the Second Bid Deadline. En

bloc bidders were also asked to clarify whether their offers could be accepted for individual locations. All parties which had submitted an offer were notified of the extension. The Bank supported extending the Original Bid Deadline.

- 2.1.10** After the Second Bid Deadline, there were five offers which included the Indian Road Assets. Two of the offers were part of en bloc offers for all of the assets of the Companies and three of the offers were for the Indian Road Assets only. From the offers received, the Receiver accepted the offer which provided the greatest recovery for the stakeholders, but was conditional upon the purchaser obtaining financing. A deposit was provided but the financing condition was not waived and the offer did not proceed.
- 2.1.11** The Indian Road property (the “**Indian Road Property**”) consists of a gas station, convenience store and the Burger King restaurant. The Burger King premises are leased by 2542372 from 2145744 Ontario Limited, the owner of the Indian Road Property. 2145744 Ontario Limited is a related company and is subject to a separate receivership proceeding in which KSV Advisory Inc. (“**KSV**”) is court-appointed receiver.
- 2.1.12** As of April 2020, the Indian Road Property was not yet sold by KSV and the covid-19 pandemic was negatively impacting the Southwestern Ontario economy. From discussions with KSV, it is the Receiver’s understanding that KSV made the decision to delay its sale efforts for the Indian Road Property because of the covid-19 pandemic.
- 2.1.13** After the offer accepted by the Receiver failed to firm up, the Receiver contacted one of the two parties which had submitted a stand-alone offer for the Indian Road Assets under the SSP. The Receiver did not consider the other stand-alone offer to be viable. The offeror advised the Receiver that it was no longer interested in pursuing a purchase at the originally offered price given concerns over the state of the economy and the covid-19 impact. Like KSV, the Receiver opted to delay continuing the marketing efforts for the Indian Road Assets.
- 2.1.14** Beginning in May, 2020, three parties that were pursuing the purchase of the Indian Road Property from KSV submitted unsolicited offers to the Receiver for the Indian Road Assets. The Receiver again contacted the party referred to in paragraph 2.1.13 above and that party also renewed its interest and submitted an offer to purchase the Indian Road Assets from the Receiver.
- 2.1.15** Details of the offers submitted are included in the Confidential Supplemental (“**Confidential Supplement**”) for which the Receiver is requesting a sealing order pending the completion of the Indian Road Transaction.

### 3.1 Proposed Sale

- 3.1.1** The Receiver and Pahal have executed a purchase and sale agreement (the “**Pahal APS**”), which is subject to the approval of this court. A redacted copy of the Pahal APS is attached as **Appendix F**. A complete version of the Pahal APS is provided in the Confidential Supplement.
- 3.1.2** The Pahal APS was conditional upon (a) Pahal being approved by BK Canada Service ULC as a franchisee to operate a Burger King restaurant from the Indian Road Property, and (b) either the consent of the landlord to the assignment of the lease to Pahal or a court order approving the assignment of the lease to Pahal having been obtained. On August 11, 2020, Pahal waived those conditions. Attached as **Appendix G** is a copy of an Amending Agreement dated August 11, 2020 between Pahal and the Receiver confirming the waiver of the conditions and extending the sunset date for the completion of the Pahal APS to October 31, 2020.
- 3.1.3** The Bank is the senior lender to the Companies. The Indian Road Transaction, if approved, will result in a shortfall to the Bank. The Bank supports the completion of the Transaction.
- 3.1.4** The Receiver’s analysis of the offers and the Indian Road Transaction is included in the Confidential Supplement.
- 3.1.5** The Indian Road Assets have been extensively exposed to the market over a prolonged period. The Indian Road Transaction represents the highest and best recovery available for the Indian Road Assets. The Receiver recommends to the Court that approval be granted for the Indian Road Transaction.
- 3.1.6** The Indian Road Assets are owned by 2542372. A copy of a search under the Ontario Personal Property Security Registration System against 2542372 Ontario Inc. is attached as **Appendix H**. The Receiver provides the following information with respect to the registrations disclosed by the PPSA search:
- (a) *BMO* – there is an outstanding registration in favour of BMO against 2542372. BMO supports the completion of the Indian Road Transaction;
  - (b) *Williams Food Equipment Company 1998 Limited (“Williams”)* – Williams registered a financing statement against 2542372 on October 9, 2019 in respect of a Cooler Night Cover. The Receiver has been unable to locate a copy of the security agreement to which the registration relates. There was no cooler night cover at Indian Road when the Receiver took possession. The cooler night cover does not form part of the chattels included in the Indian Road Transaction.
  - (c) *CIBC* – CIBC registered a financing statement against 2542372 to provide notice of the mareva order. The Receiver is unaware of any security interest held by CIBC in the assets subject to the Indian Road Transaction.



**4.1.1** We submit this Third Report to the Court and respectfully request that the Court make an order as requested in paragraph 1.2.1 above.

All of which is respectfully submitted this 14<sup>th</sup> day of August 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