

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

THE HONOURABLE MR. ) WEDNESDAY, THE 10<sup>TH</sup> DAY  
 )  
JUSTICE PENNY ) OF NOVEMBER, 2021  
 )

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.

**APPROVAL AND VESTING ORDER**

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 approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and 2071342 Ontario Inc. (the "Purchaser") dated October 3, 2021 and appended as appendix A to the confidential supplement to the Fifth and Final Report of the Receiver dated October 22, 2021 (the "Fifth Report") and, as directed by the Purchaser, vesting in 2854762 Ontario Inc. the Debtors' right, title and interest, if any, in and to the assets described in the Sale Agreement (the

"Purchased Assets"), was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Fifth Report and the confidential supplement to the Fifth Report and on hearing the submissions of counsel for the Receiver and such other counsel that were present as listed on the participant information sheet, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to 2854762 Ontario Inc.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtors' right, title and interest, if any, in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in 2854762 Ontario Inc., free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Hainey dated October 16, 2019, as amended; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*, (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Essex (#12) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby

directed to enter 2854762 Ontario Inc. as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. 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.

A handwritten signature in blue ink, appearing to read "R. J.", positioned above a horizontal line.

*Justice, Ontario Superior Court of Justice*

**Schedule A – Form of Receiver’s Certificate**

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

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

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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.

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (the "Court") dated October 16, 2019, as amended, MNP Ltd. was appointed as the 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. (collectively, the "Debtors").

B. Pursuant to an Order of the Court dated November 10, 2021, the Court approved the agreement of purchase and sale made as of October 3, 2021 (the "Sale Agreement") between the Receiver and 2071342 Ontario Inc. (the "Purchaser") and, as directed by the Purchaser provided for the vesting in 2854762 Ontario Inc. of the Debtors' right, title and interest, if any, in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the

payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**MNP LTD., in its capacity as 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. and not in its personal capacity**

Per: \_\_\_\_\_

Name: Rob Smith

Title: Senior Vice-Principal

## **Schedule B – Purchased Assets**

1. The real property legally described as PART LOT 303 CON NTR SANDWICH EAST DESIGNATED AS PARTS 21 & 30 PL 12R13656; S/T R1377520; TOWN OF TECUMSEH (PIN 70622-0310), including all plants, buildings, fixtures, erections and improvements thereon (the “Real Property”);
2. The following chattels and equipment (the “Chattels”) situate on the Real Property:
  - Six (6) double sided self-service diesel fueling pumps
  - Three (3) double sided self-service petroleum pumps
  - All underground storage tanks
  - All shelving and refrigeration equipment
3. Inventories of every kind and nature located on the Real Property pertaining to the Businesses (as defined in the Sale Agreement), including: (i) diesel fuel in underground storage tanks; (ii) propane; and (iii) convenience store merchandise (but not including lottery tickets and related supplies); and
4. The full benefit of all warranties, warranty rights, performance bonds and indemnities (implied express or otherwise) of any of the Debtors against manufacturers, contractors or any other Person in respect of the Real Property or the Chattels, but only to the extent that same are capable of being assigned.

**Schedule C – Claims to be deleted and expunged from title to Real Property**

Registration Number	Date	Instrument Type
CE859181	2018/11/13	NOTICE OF LEASE
CE863792	2018/12/07	CHARGE
CE863793	2018/12/07	NO ASSGN RENT GEN
CE863800	2018/12/07	POSTPONEMENT
CE896668	2019/07/16	CHARGE
CE896669	2019/07/16	NO ASSGN RENT GEN
CE917785	2019/11/12	APL COURT ORDER
CE1011358	2021/05/31	TRANSFER OF CHARGE
CE1011580	2021/06/01	TRANSFER OF CHARGE
CE1013352	2021/06/10	APL OF SURV-CHRG
CE1013499	2021/06/10	TRANSFER OF CHARGE



**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

1. The reservations, limitations, provisos, conditions, restrictions and exceptions expressed in the letters patent or grant from the Crown and all statutory exceptions to title;
2. The provisions of governing municipal by-laws;
3. Municipal taxes, liens, charges, including hydro and water charges, rates and assessments accruing from day to day and not yet due and payable;
4. Any minor encroachments which might be revealed by an up to date survey of the Premises but which do not materially adversely affect the use and marketability of the Premises;
5. Any right of expropriation conferred upon, reserved to or vesting in Her Majesty the Queen in Right of Canada and Ontario;
6. Any agreements, restrictions or covenants that run with the Premises and any agreements with the municipal, utilities or public authorities provided that same have been complied with in all material respects and do not materially adversely affect the use and marketability of the Premises;
7. Any easements, rights of way or right of re-entry, which do not impair the intended use of the Premises, by the Purchaser, and provided that same have been complied within all material respects and do not materially adversely affect the use and marketability of the Premises; and
8. The following instruments registered on title to the Premises in the Essex Land Registry Office:

Registration Number	Date	Instrument Type
12R13656	1994/12/22	PLAN REFERENCE
R1300094	1995/02/09	AGREEMENT
R1377520	1997/03/10	TRANSFER EASEMENT
R1412413	1998/01/14	AGREEMENT
12R23996	2009/06/18	PLAN REFERENCE
CE776890	2017/06/19	NOTICE

BANK OF MONTREAL

and

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

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**APPROVAL AND VESTING ORDER**

**MILLER THOMSON LLP**

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Receiver of the assets, undertakings and  
properties of 1254044 Ontario Limited, 2431264  
Ontario Inc., 2189788 Ontario Inc., 1552838  
Ontario Inc., 1786675 Ontario Limited, 2034039  
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