

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

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

**1340182 ONTARIO LIMITED and KAZEMBE & ASSOCIATES
PROFESSIONAL CORPORATION**

Respondents

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 OF THE RECEIVER

Date: March 28, 2024

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Lawyers for Court-appointed Receiver,
MNP Ltd.

TO: **THE SERVICE LIST**

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

B E T W E E N:

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TAB 1

Court File No. CV-23-00698539-00CL

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

B E T W E E N:

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Applicant

- and -

**1340182 ONTARIO LIMITED and KAZEMBE & ASSOCIATES
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Respondents

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

NOTICE OF MOTION

MNP Ltd. (“**MNP**”) in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of the undertaking, property and assets of Kazembe & Associates Professional Corporation (“**K&A OpCo**”) and 1340182 Ontario Limited (“**Real Estate Co**”) will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on April 8, 2024, at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order, substantially in the form attached at Tab 3 of this Motion Record, that, among other things:
 - a. if necessary, abridging the time for service of this Notice of Motion and Motion Record and dispensing with further service of this Notice of Motion and Motion Record such that this Motion is properly returnable on the date that it is heard;
 - b. approving the Second Report of the Receiver, dated March 28, 2024 (the “**Second Report**”) and the activities of the Receiver and its counsel as described therein;
 - c. approving the Receiver’s Interim Statement of Receipts and Disbursements;
 - d. approving the fees and disbursements of the Receiver and its counsel to the completion of these proceedings;
 - e. authorizing the Receiver to make a distribution to Real Estate Co’s secured creditors in accordance with the direction from this Honourable Court;
 - f. approving the discharge of the Receiver upon filing of the Discharge Certificate in the form substantially as set out in the Order, certifying that the remaining receivership tasks described in the Second Report have been completed by the Receiver; and
 - g. such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

2. On May 11, 2023, MNP was appointed as Receiver, without security, of certain assets, undertakings and properties of K&A OpCo;

3. K&A OpCo operated a legal practice from the single tenant office building owned by a related party, Real Estate Co, that is also a Respondent in these proceedings (collectively with K&A OpCo, the “**Companies**”);

4. On June 23, 2023, MNP was appointed as Receiver without security, of the assets, undertakings and properties of Real Estate Co by order of the Court (the “**Realty Appointment Order**”);

5. The Companies are provincially incorporated entities. K&A OpCo operated from Real Estate Co’s 3,200 sq. ft. two story single tenant office building located at 1888 Wilson Avenue, Downsview, Ontario (the “**Wilson Property**”);

Sale of the Wilson Property

6. On October 10, 2023, the Receiver entered into an Agreement of Purchase and Sale with Syad Manosoor Ali Naqui in trust for a corporation to be formed, as purchaser (the “**Purchaser**”), in respect of the Wilson Property (the “**Wilson APA**”);

7. On November 22, 2023, the Court issued an Approval and Vesting Order that, among other things, approved and authorized the Receiver to complete the Wilson APA. The Court also issued an administrative order that, among other things, approved the Receiver’s First Report and the conduct and fees of the Receiver and its counsel on November 22, 2023 (the “**Administrative Order**”);

8. Due to objections raised by Arthur Bryan (“**Bryan**”), a registered mortgagee on title to the Wilson Property, the Receiver did not seek Court approval of any proposed distributions to the secured creditors of Real Estate Co pending a judicial determination as to entitlement;

9. The transaction in respect of the Wilson APA closed on January 15, 2024 and the Receiver is holding approximately \$1.5 million of net sale proceeds (the “**Net Proceeds**”);

Distribution, Approval of Fees and Discharge

10. The Receiver obtained a legal opinion on the validity and enforceability of the mortgages held by the secured creditors of Real Estate Co, being 923944 Ontario Ltd. (“**923 Corp**”) and Canadian Imperial Bank of Commerce (“**CIBC**”). There is a dispute between Bryan, 923 Corp and CIBC as to the priorities of the secured interests registered by these parties;

11. The Receiver proposes to distribute the Net Proceeds in accordance with this Honourable Court’s determination of the priority dispute as between Bryan, 923 Corp and CIBC;

12. The Receiver’s proposed distribution contemplates maintaining a holdback amount with respect to professional fees, HST obligations and other costs;

13. The Receiver has prepared an Interim Statement of Receipts and Disbursements, as of March 27, 2024;

14. The Receiver and its legal counsel, Minden Gross LLP and Blaney McMurtry LLP, have prepared fee affidavits. The Receiver seeks approval of the fees and disbursements of the Receiver and its counsel, and is of the view that these fees and disbursements are reasonable;

15. The principal purpose of the receivership has been to deal with the administration of K&A OpCo and to market and sell the Wilson Property. The Receiver has now coordinated the transfer

of all client files from K&A OpCo and has sold the Wilson Property. The Receiver now seeks a discharge upon the filing of a certificate attached as Schedule “A” to the draft Order;

16. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*; and

17. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

18. the Second Report of the Receiver, dated March 28, 2024; and

19. such further and other evidence as counsel may advise and this Honourable Court permit.

March 28, 2024

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Lawyers for the Court-appointed Receiver,
MNP Ltd.

TO: **THE SERVICE LIST**

CANADIAN IMPERIAL BANK OF COMMERCE and

Applicant

Respondents

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

Proceeding commenced at **Toronto**

NOTICE OF MOTION

BLANEY MCMURTRY LLP

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Lawyers for Court-appointed Receiver,
MNP Ltd.

TAB 2

Court File No. CV-23-00698539-00CL

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

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

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**1340182 ONTARIO LIMITED and KAZEMBE & ASSOCIATES
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Respondents

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

**SECOND REPORT OF MNP LTD. AS RECEIVER OF THE ASSETS, UNDERTAKINGS
AND PROPERTIES OF THE RESPONDENTS**

March 28, 2024

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Appendix “D” – Supplement to First Report dated November 16, 2023

Appendix “E” – Administrative Order dated November 22, 2023

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Appendix “G” – Statement of Adjustments and Statement of Funds re sale of Wilson Property

Appendix “H” –Statement of Receipts and Disbursements period ending March 27, 2024

Appendix “I” – Affidavit of Jerry Henechowicz, sworn March 27, 2024

Appendix “J” – Affidavit of Timothy Dunn, sworn March 28, 2024

Appendix “K” – Canadian Imperial Bank of Commerce Payout Statement as at March 20, 2024

INTRODUCTION TO BACKGROUND

1. On May 11, 2023, MNP Ltd. (“**MNP**”) was appointed as the receiver (the “**Receiver**”) without security, of certain assets, undertakings and properties (the “**Property**”) of Kazembe & Associates Professional Corporation (“**K&A OpCo**”) by order (the “**K&A Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). A copy of the K&A Appointment Order and its corresponding endorsement is attached as **Appendix “A”**.

2. K&A OpCo operated a legal practice from the single tenant office building owned by a related party, 1340182 Ontario Limited (“**Real Estate Co**”) that is also a Respondent in these proceedings (collectively with K&A OpCo, the “**Companies**”). The circumstances leading to the appointment of the Receiver are set out in the affidavit of Jo-Ann Mitchel of Canadian Imperial Bank of Commerce sworn April 27, 2023, filed in support of the application to appoint MNP as the receiver of K&A OpCo and Real Estate Co (the “**Mitchel Affidavit**”).

3. On June 23, 2023, MNP was appointed as Receiver without security, of the assets, undertakings and properties of Real Estate Co by order of the Court (the “**Realty Appointment Order**”). A copy of the Realty Appointment Order and its corresponding endorsement is attached as **Appendix “B”**.

4. The Companies are provincially incorporated entities. K&A OpCo operated from Real Estate Co’s 3,200 sq. ft. two story single tenant office building located at 1888 Wilson Avenue, Downsview, Ontario (the “**Wilson Property**”).

5. The Receiver’s first report dated November 10, 2023, (the “**First Report**”) provided, among other things, an update to the Court regarding:

- (a) the sale process conducted by the Receiver for the Wilson Property;
- (b) the offer received for the Wilson Property in the form of an Agreement of Purchase and Sale dated October 10, 2023 (the “**Wilson APA**”) entered into between the Receiver and Syad Manosoor Ali Naqui in trust for a corporation to be formed, as purchaser (the “**Purchaser**”), in respect of the Wilson Property and the transaction contemplated therein (the “**Transaction**”); and
- (c) provided the Receiver’s recommendation for an order (s), *inter alia*:

- i. approving and authorizing the Receiver to complete the Wilson APA, as amended and approving the Transaction authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing the Transaction;
- ii. vesting Real Estate Co's right, title and interest, if any, in and to the Wilson Property in the Purchaser, free and clear of any encumbrances, save and except as otherwise contemplated by the Wilson APA;
- iii. approving the fees and disbursements of each of the Receiver and its counsel Minden Gross LLP, ("**Minden Gross**") as set out in First Report;
- iv. approving the interim statement of receipts and disbursements for each of the Companies dated October 31, 2023 (collectively the "**R&D's**"); and
- v. approving the First Report and the activities of the Receiver as set out herein.

A copy of the First Report (without appendices) is attached as **Appendix "C"**.

6. On November 16, 2023, the Receiver filed a Supplemental Report to the First Report (the "**Supplemental Report**") for the purposes of providing the Court with calculation of the Real Estate Co's indebtedness to each of 923944 Ontario Ltd. ("**923 Corp**") and Canadian Imperial Bank of Commerce ("**CIBC**"). A copy of the Supplemental Report (without appendices) is attached hereto as **Appendix "D"**.

7. On November 22, 2023, the Court issued two orders:

- (a) an administrative order (the "**Administrative Order**") that, among other things, approved the First Report, the conduct and activities of the Receiver and Minden Gross and the fees and disbursements of the Receiver and Minden Gross but did not approve the proposed distribution to the secured creditors of Real Estate Co;
- (b) an approval and vesting order (the "**AVO**") that, among other things:
 - (i) approved and authorized the Receiver to complete the Wilson APA, as amended, and approving the Transaction authorizing the Receiver

to take such steps as are necessary and appropriate to facilitate the closing the Transaction; and

- (ii) vested Real Estate Co's right, title and interest, if any, in and to the Wilson Property in the Purchaser, free and clear of any encumbrances, save and except as otherwise contemplated by the Wilson APA;

Copies of the Administrative Order and AVO are attached hereto as **Appendices "E" and "F"**, respectively.

8. Following the Responding Materials filed and submissions by Arthur Bryan ("**Bryan**"), a registered mortgagee on title to the Wilson Property, the Court did not approve the Receiver's proposed distributions to the secured creditors of Real Estate Co as set out in paragraphs 46 to 48 of the First Report.

PURPOSE OF THIS REPORT

9. The purpose of this the Receiver's second report (the "**Second Report**") is to provide the Court with an update regarding:

- (a) the Receiver's activities in respect of the Companies since November 10, 2023, the date of the First Report;
- (b) the Companies' current indebtedness to 923 Corp and CIBC as reported by each of those parties;
- (c) the Professional Fees (as such term is later defined) including the Receiver's proposed allocation of the Professional Fees between the Companies;
- (d) the Receiver's proposed distribution of the funds presently on hand as between 923 Corp and CIBC;
- (e) the Receiver's recommendation for an order (s), *inter alia*;
 - (i) approving the Professional Fees as set out in the affidavits attached hereto;
 - (ii) approving the combined Interim Statement of Receipts and Disbursements for the Companies dated March 25, 2024;

- (iii) subject to maintaining a suitable holdback for Professional Fees and other costs necessary for the completion of the administration of these proceedings, authorizing the Receiver to distribute the remaining funds to Real Estate Co's secured creditors as set out further below in this Report;
- (iv) approving the Receiver's activities and those of its legal counsel, as outlined in this Second Report;
- (v) discharging and releasing MNP as Receiver, upon the Receiver filing with the Court a certificate in the form attached as Schedule "A" to the draft Distribution and Discharge Order (the "**Distribution and Discharge Certificate**"), included in the Receiver's Notice of Motion; and
- (vi) granting such further and other relief as counsel may advise and this Court may permit.

TERMS OF REFERENCE

10. Capitalized terms not otherwise defined herein shall have the meaning ascribed to that term pursuant to the First Report.

11. In preparing this Second Report, the Receiver has relied on unaudited financial and other information regarding the Companies and their assets which includes, but is not limited to, the following information (collectively, the "**Information**"):

- (a) as set out in the various motion and responding materials filed in these proceedings;
- (b) as provided by the Companies, which includes the available books and records;
- (c) as provided by CIBC and its legal counsel, Gowlings WLG LLP ("**Gowlings**");
- (d) as provided by Fogler Rubinoff LLP ("**Fogler**") as counsel to 923 Corp;

- (e) as provided by the meetings with Mr. Courtney Kazembe (“**Courtney**”) and other former employees/contractors of K&A OpCo;
- (f) included in an appraisal of the Wilson Property obtained from Colliers International Realty Advisors Inc. (“**Colliers**”);
- (g) obtained in discussions and negotiations with the CBRE Limited (“**CBRE**”) and Hallmark Corbo & Kelos Group Realty Ltd. (“**Kelos**”) that and realtors that provided listing proposals for the Wilson Property;
- (h) obtained in discussions with various parties that contacted the Receiver as prospective purchasers of certain of the Wilson Property;
- (i) obtained in discussions and negotiations between Kelos and the Purchaser of the Wilson Property; and
- (j) as otherwise available to the Receiver and its counsel, Minden Gross that was later replaced by Blaney McMurtry LLP (“**Blaney**”).

12. Except as described in this Second 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.

RECEIVER’S ACTIVITIES

K&A Op-Co

14. The Receiver’s activities in respect of K&A OpCo since November 10, 2023, the date of the First Report, have concentrated on:

- (a) coordinating the transfer of all of the client’s files to Courtney in consultation with the Law Society of Ontario; and
- (b) making arrangements for the pick-up of all individual’s personal property still located at the Wilson Property including certain property owned by Courtney.

15. For the reasons set out in paragraphs 16 to 18 of the First Report, there were no additional assets realizations from K&A OpCo's property.

Real Estate Co

16. The Transaction in respect of the Wilson Property closed on January 15, 2024 with the balance of the Purchase Price, net of commissions and property tax arrears, of \$1,523,489.19 being remitted to the Receiver on same date. Copies of the Statement of Adjustments and Statement of Funds for the Transaction are attached as **Appendix "G"**.

17. The Receiver's other activities in respect of Real Estate Co concentrated upon:

- (a) taking those steps necessary to provide vacant possession of the Wilson Property to the Purchaser;
- (b) maintaining all utility, insurance, security and other related services necessary to safeguard and protect the Wilson Property;
- (c) attending to other matters that arose in transitioning ownership of the Wilson Property to the Purchaser; and
- (d) repayment of monies borrowed from CIBC under Receiver borrowing certificates and used to fund holding costs associated with the Wilson Property.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

18. The combined Interim Statements of Receipts and Disbursements as at March 26, 2024 for each of K&A OpCo and Real Estate Co (the "**R&D**") is attached hereto as **Appendix "H"**. The R&D reports net receipts over disbursements, as at March 27, 2024 totaling \$1,450,368.89, comprising \$1,792.27 and \$1,448,576.62 in respect of K&A OpCo and Real Estate Co, respectively. The Receiver respectfully requests that the Court approve the R&D.

RECEIVER AND COUNSEL PROFESSIONAL FEES

19. The Receiver has provided services and incurred disbursements in respect of the Companies during the period to November 1, 2023 to February 29, 2024 totaling \$32,194.83 inclusive of disbursements and applicable HST. The affidavit of Jerry Henechowicz, sworn March

27, 2024 as to the aforementioned fees and disbursement of the Receiver is attached hereto as **Appendix “I”**.

20. In addition to the above, the Receiver’s estimates its fees, disbursements and applicable taxes to the completion of these proceedings will not exceed \$15,000.

21. Additionally, the Receiver has incurred legal fees of its legal counsel, Minden Gross and Blaney, in respect of these proceedings. Minden Gross’ accounts for the period from November 1, 2023 to January 24, 2024 total \$35,770.44 inclusive of HST. In addition, Blaney’s accounts for the period of February 5, 2024 to March 13, 2024 total \$3,802.99, inclusive of HST. The affidavit of Timothy Dunn, sworn March 28, 2024 as to the fees and disbursements of Minden Gross and Blaney is attached hereto as **Appendix “J”**.

22. It is anticipated that Blaney’s fees for the duration of the proceeding will be approximately \$15,000 inclusive of disbursements and HST.

23. The Receiver is of the view that accounts are reasonable in the circumstances and respectfully requests that this Court approve its accounts for the period of November 1, 2023 to the completion of the administration of these proceedings in the amount of \$47,194.83 inclusive of disbursements and HST, and approve the accounts of its legal counsel, Minden Gross’/Blaney’s, for the period of November 1, 2023 to the completion of the receivership in the amount of \$54,573.43 inclusive of disbursements and HST (collectively, the “**Professional Fees**”).

24. The Receiver submits that the Professional Fees are reasonable in the circumstances and have been or will be validly incurred in accordance with the provisions of K&A Appointment Order and Realty Appointment Order.

ALLOCATION OF PROFESSIONAL FEES

25. Paragraph 17 of the Realty Appointment Order provides that, *inter alia*, the Receiver and its counsel’s first charge (the “**Receiver’s Charge**”) against Real Estate Co’s Property in priority to the 923 Mortgage is limited to \$75,000 plus costs, disbursements and applicable taxes (the “**923 Fee Cap**”) in connection with the Wilson Property as set out therein. To the extent the Receiver’s Charge exceeds the 923 Fee Cap, the Receiver’s Charge has priority to all other potential charges and encumbrances against Real Estate Co’s Property.

26. The Receiver and its counsel take the position that substantially all the Receiver and its counsel's activities after June 1, 2023 were related to marketing and completing the sale of the Wilson Property, dealing with the administration of the net sale proceeds and administration of these proceeding generally. The Receiver further submits that all of the Receivership costs other than the Receiver and counsel's fees and disbursements in respect of Real Estate Co and Wilson Property set out in the R&D totaling \$210,757.57¹, are not included in the calculation of the 923 Fee Cap.

27. Based on the above, the allocation of the Receiver and its counsel's fees, including anticipated fees and disbursements to the completion of the receivership, is summarized below:

	K&A OpCo	Real Estate Co	Total
Receiver's fees & disbursements	\$ 28,405.40	\$ 87,059.65	\$ 115,465.05
Receiver's Counsel's fees & disbursements		\$48,371.09	\$48,371.09
Total	\$ 28,405.40	\$135,430.74	\$163,836.14

Based on the above, the Receiver and its counsel's fees and disbursements in respect of Real Estate Co exceed the 923 Fee Cap of \$75,000. Accordingly, the balance of the Receiver's Charge of \$60,430.74 is subordinate to 923 Corp but has priority to any subordinate creditor to 923 Corp.

STATUTORY PRIORITIES

28. Since there were no recoveries from K&A OpCo's assets and neither of the Companies had any employees, accordingly we do not anticipate a CRA claim for unremitted employee source deductions.

29. As set out in the First Report, on July 27, 2023, CRA sent a letter to the Receiver identifying an obligation of K&A OpCo on filed HST returns totaling \$171,334.24 associated with the periods ending December 31, 2017 to December 31, 2020 and that HST returns for the period January 1, 2021 to May 11, 2023 (the date of the Receiver's appointment of K&A OpCo) were outstanding. In addition, CRA filed a claim against Real Estate Co for \$103,503.77 for unremitted HST for the

¹ Calculated as total Real Estate Co disbursements of \$379,777.37 for less Receiver's fees & disbursements of \$73,699.80, Repayment of Secured Creditor Advances of \$44,594.69 and Legal fees & disbursements of \$50,725.31.

December 31 fiscal years of 2018 to the date of the Receiver's appointment on May 11, 2023 (the "**Real Estate Co HST Claim**").

30. The Receiver has not assessed the priority of the CRA HST Claim to the prescribe security interests of the mortgagees and proposes to maintain these funds as part of the Holdback set out below.

PROPOSED DISTRIBUTION AND HOLDBACK

31. As previously reported based solely on timing of the registered charges on title, 923 Corp holds a first mortgage on the Wilson Property, following by CIBC and then Bryan.

32. 923 Corp has stated that, as of March 20, 2024, a balance is due and owing of \$1,272,872.94. CIBC by its counsel Gowlings WLG has provided a payout statement as at March 20, 2024 that indicates a balance due of \$1,085,502.19. A copy of the CIBC payout statement is attached hereto as **Appendix "K"**.

33. The Receiver recommends it distribute all available funds to which ever party the Court directs, subject to maintaining a holdback (the "**Holdback**") of \$350,000 comprising \$60,000, in respect of the Receiver and its counsel's outstanding and estimated fees and disbursements set out above, \$180,000 for HST collected by the Receiver to be remitted to CRA and \$105,000 for the Real Estate Co HST Claim and \$5,000 for other costs related to the administration of these proceedings.

RECEIVER'S DISCHARGE

34. Subject to the below, the Receiver has substantially concluded its administration of the receivership. The remaining tasks to conclude the receivership administration are as follows (collectively, the "**Remaining Activities**"):

- (a) retaining and administering the Holdback;
- (b) completing the distribution pursuant to the Court's directions;
- (c) preparation and filing of all remaining post-receivership HST returns and reporting;

- (d) prepare and file the Receiver's final report as required under section 246(3) of the of the BIA, and other administrative filings; and
- (e) any incidental tasks that may be required in connection with concluding the receivership proceedings including, without limitation, the filing of the Discharge Certificate.

35. To the best of the Receiver's knowledge, following the completion of the Remaining Activities, the Receiver will have completed its administration of the receivership estate in accordance with the terms of the Receivership Order, and the various Orders rendered by the Court in the course of these proceedings. The Receiver is not aware of its services being required for any further purpose other than as set out in this Second Report. Accordingly, the Receiver is seeking its discharge in accordance with the terms of the Distribution and Discharge Order.

CONCLUSION AND RECOMMENDATION

36. Based on the foregoing and as outlined in this Second Report, the Receiver respectfully requests that this Court issue an order providing the relief set out above in paragraph 9(e) of this Second Report.

All of which is respectfully submitted this 28th day of March, 2024.

MNP LTD.

**Court-appointed Receiver of
Kazembe & Associates Professional Corporation and 1340182 Ontario Limited**

Per:



Jerry Henechowitz CPA, CA, CIRP, LIT
Senior-Vice President

APPENDIX A

Court File No. CV-23-00698539-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	THURSDAY, 11 TH DAY OF MAY, 2023
)	
JUSTICE OSBORNE)	

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

1340182 ONTARIO LIMITED AND

KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION

Respondents

ORDER
(appointing Receiver)

THIS APPLICATION made by the Canadian Imperial Bank of Commerce (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. ("**MNP**") as receiver (in such capacity the "**Receiver**") without security, of all of the assets, undertakings and properties of Kazembe & Associates Professional Corporation ("**K&A OpCo**" or, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the affidavit of Jo-Ann Mitchell sworn April 27, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and all other parties listed on the Counsel Slip, no one else appearing for any other party although duly served as appears from the affidavit of service of Katherine Yurkovich sworn April 27, 2023, and on reading the consent of MNP to act as the Receiver,

APPOINTMENT

1. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP is hereby appointed Receiver, without security, of all of the assets, undertakings and property of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

2. **THIS COURT ORDERS** that notwithstanding anything else herein, and for greater certainty, the defined term "**Property**" as used herein shall not include any of the assets, undertakings and properties listed in Schedule A (the "**Excluded 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 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, and in this regard the Receiver is specifically authorized to retain counsel for the Applicant to advise and represent it save and except on matters upon which the Receiver in its judgement determines that it requires independent advice, in which case the Receiver shall retain independent counsel;
- (d) 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;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor, including recovering from clients, former clients and/or successor or substituting lawyers

any outstanding disbursements or legal fees for services rendered by the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, the right of the Receiver to assert a solicitors lien on behalf of the Debtor and to, with the approval of this Court, seek to apply any corresponding retainers or other monies held in trust by the Debtor;

- (f) to settle, extend or compromise any indebtedness owing to the Debtor;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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 \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; 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*, and/or section 31 of the *Ontario Mortgages Act*, as the case may be, shall not be required.

- (k) 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;
- (l) 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;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) 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;
- (o) 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;
- (p) to receive, share, transfer and otherwise exchange information related to the Debtor and the Property with the Law Society of Ontario (the “**LSO**”), including but not limited to documents, records and other information with respect to the Debtor’s client files, bank statements and bank accounts (operating and trust), dockets, disbursements, expenses, and insurance coverage and policies;
- (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 REMIT AND 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 Courtney Akinwale Kazembe and any other employees or former employees of the Debtor shall provide the Receiver with such information as the Receiver may request relating to the business and affairs of the Debtor, including, without limitation, information relating to client files transferred to other lawyers, client files that have not been transferred to other lawyers, and trust accounts maintained by the Debtor.

6. **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 6 or in paragraph 7 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.

7. **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.

8. **THIS COURT ORDERS** that notwithstanding paragraph 6, for purposes of dealing with the Property, the Receiver shall be entitled to receive and review Records and / or information relating to the Debtor's client files, stored as paper records, electronically or otherwise, provided that the Receiver and its Counsel shall be required to keep the information that is confidential and/or privileged contained in the Debtor's client files (the "**Confidential Information**") as such, and shall comply with any and all laws and regulations applicable to the maintenance and transfer of any such Records or files to any successor or substituting lawyer.

9. **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

10. **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

11. **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

12. **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

13. **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

14. **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

15. **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

16. **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

17. **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

18. **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

19. **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

20. **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 its 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.

21. **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.

22. **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

23. **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 \$250,000 (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.

24. **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.

25. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule B hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

26. **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

27. **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/eservice-commercial/>) 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. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.mnpdebt.ca/kazembe&assocpc

28. **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

29. **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.

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

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada 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.

32. **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.

33. **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.

34. **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.

35. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with

Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or application for leave to appeal is brought to an appellate court.

SCHEDULE A
EXCLUDED PROPERTY

1. Any and all trust accounts held or operated by K&A OpCo;
2. Any and all trust funds held by K&A OpCo;
3. Any and all current and former client files (excluding for greater certainty the receivables associates with such files, and time docket and other information the Receiver requires for purposes of rendering accounts to the clients of the Debtor), stored as paper records, electronically or otherwise.

**SCHEDULE B
RECEIVER CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that MNP Ltd. the receiver (the "**Receiver**") of the assets, undertakings and properties of Kazembe & Associates Professional Corporation (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") other than the Excluded Property (as defined in the Order) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the May 11, 2023 (the "**Order**") made in an action having Court file number CV-15-_____-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 \$_____ 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 [daily] [monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ 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
and Manager of the Property and not in its
personal capacity

Per: _____

Name:

Title:

CANADIAN IMPERIAL BANK OF COMMERCE

Court File No. CV-23-00698539-00CL
**1340182 ONTARIO LIMITED and KAZEMBE &
ASSOCIATES PROFESSIONAL CORPORATION**

- and -

Respondents

Applicant

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

	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p style="text-align: center;">PROCEEDING COMMENCED AT TORONTO</p> <hr/> <p style="text-align: center;">RECEIVERSHIP ORDER</p>
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Email: kate.yurkovich@gowlingwlg.com

Lawyers for the Applicant

APPENDIX B

Court File No. CV-23-00698539-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAME) THURSDAY, 22 DAY OF JUNE, 2023
)
JUSTICE STEELE)

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

1340182 ONTARIO LIMITED AND
KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION

Respondents

ORDER
(appointing Receiver)

THIS APPLICATION made by the Canadian Imperial Bank of Commerce (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. ("**MNP**") as receiver (in such capacity the "**Receiver**") without security, of all of the assets, undertakings and properties of 1340182 Ontario Limited (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the affidavit of Jo-Ann Mitchell sworn April 27, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and the other parties listed on the Counsel Slip, no one else on the service list appearing although duly served as appears from the affidavit of service of Katherine Yurkovich sworn April 27, 2023 and on reading the consent of MNP to act as the Receiver,

APPOINTMENT

1. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

2. **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 engage consultants, appraisers, agents, real estate brokers, 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;
- (d) 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;
- (e) 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;
- (f) to settle, extend or compromise any indebtedness owing to the Debtor;

- (g) 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;
 - (h) 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;
 - (i) 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;
 - (j) 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 \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; 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*, and/or section 31 of the *Ontario Mortgages Act*, as the case may be, shall not be required.
- (k) 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;
 - (l) 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;

- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) 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;
- (o) 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;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (q) 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 REMIT AND PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. **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 their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order including 923944 Ontario Ltd. (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.

4. **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, planning documents, architectural reports, land surveys, other documents or reports prepared in respect of the Property 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 4 or in paragraph 5 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.

5. **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.

6. **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

7. **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

8. **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

9. **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

10. **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

11. **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

12. **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

13. **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

14. **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

15. **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

16. **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

17. **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 its 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, provided however that the priority of the Receiver's Charge over the mortgage of 923944 Ontario Ltd (the "**923 Mortgage**"), shall be limited to the sum of (a) \$75,000.00 in respect of the Receiver's and its counsel's fees incurred in respect of the Debtor (the "**923 Fee Cap**"); plus (b) the cost of any disbursements incurred by the Receiver and its counsel in respect of the Debtor, which may include without limitation, the costs of any realtor commissions, payments for maintenance, insurance, taxes and utilities, building condition surveys, appraisals and phase one environmental assessments. To the extent the Receiver's and its counsel's fees exceed the 923 Fee Cap, the portion of the Receiver's Charge securing such excess shall be subordinate in priority to the 923 Mortgage, but in priority to all other 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.

18. **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.

19. **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

20. **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 \$250,000 (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.

21. **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.

22. **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.

23. **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

24. **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/eservice-commercial/>) 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. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.mnpdebt.ca/kazembe&assocpc

25. **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

26. **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.

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

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada 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.

29. **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.

30. **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.

31. **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.

32. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or application for leave to appeal is brought to an appellate court.

**SCHEDULE A
RECEIVER CERTIFICATE****CERTIFICATE NO.** _____**AMOUNT \$** _____

1. **THIS IS TO CERTIFY** that MNP Ltd. the receiver (the "**Receiver**") of the assets, undertakings and properties of 1340182 Ontario Limited (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") other than the Excluded Property (as defined in the Order) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the May 11, 2023 (the "**Order**") made in an action having Court file number CV-15-_____-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 \$_____ 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 [daily] [monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ 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
and Manager of the Property and not in its
personal capacity

Per: _____

Name:

Title:

- and -

Respondents

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

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

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

PROCEEDING COMMENCED AT TORONTO

RECEIVERSHIP ORDER

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APPENDIX C

Court File No. CV-23-00698539-00CL

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

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

**1340182 ONTARIO LIMITED AND
KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION**

Respondents

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

**FIRST REPORT OF MNP LTD. AS RECEIVER OF THE ASSETS, UNDERTAKINGS AND
PROPERTIES OF THE RESPONDENTS**

November 10, 2023

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APPENDICES

- Appendix “A”:** Appointment Order dated May 11, 2023
- Appendix “B”:** Appointment Order dated June 22, 2023
- Appendix “C”:** Listing Agreement dated August 29, 2023
- Appendix “D”:** Interim Statement of Receipts and Disbursements
- Appendix “E”:** Affidavit of Jerry Henechowicz sworn November 9, 2023
- Appendix “F”:** Affidavit of Timothy Dunn sworn November 9, 2023
- Appendix “G”:** Parcel Register
- Confidential Appendix “1”:** Agreement of Purchase and Sale
- Confidential Appendix “2”:** Colliers Appraisal
- Confidential Appendix “3”:** Listing Proposals
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INTRODUCTION

1. On May 11, 2023, MNP Ltd. (“**MNP**”) was appointed as the receiver (the “**Receiver**”) without security, of certain assets, undertakings and properties (the “**Property**”) of Kazembe & Associates Professional Corporation (“**K&A OpCo**”) by order (the “**K&A Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). A copy of the K&A Appointment Order and its corresponding endorsement is attached as **Appendix “A”**.
2. K&A OpCo operated a legal practice from the single tenant office building owned by a related party, 1340182 Ontario Limited (“**Realty Co**”) that is also a Respondent in these proceedings. The circumstances leading to the appointment of the Receiver are set out in the affidavit of Jo-Ann Mitchel of Canadian Imperial Bank of Commerce sworn April 27, 2023, filed in support of the Appointment Order (the “**Mitchel Affidavit**”).
3. On June 22, 2023, MNP was appointed as Receiver without security, of the assets, undertakings and properties of Realty Co by order of the Court (the “**Realty Appointment Order**”). A copy of the Realty Appointment Order and its corresponding endorsement is attached as **Appendix “B”**.
4. K&A OpCo and Realty Co are provincially incorporated entities. As noted above, K&A OpCo operated from Realty Co’s 3,200 sq. ft. two story single tenant office building located at 1888 Wilson Avenue, Downsview, Ontario (the “**Wilson Property**”).

PURPOSE OF THIS REPORT

5. The purpose of this report (the “**First Report**”) is to update the Court with respect to:
 - (a) the Receiver’s initial activities in respect of K&A OpCo and Realty Co (collectively, the “**Companies**”) since it’s appointment and to provide additional background information about the Companies, its assets and its liabilities;
 - (b) the sale process conducted by the Receiver for the Wilson Property;
 - (c) review an offer received for the Wilson Property in the form of an Agreement of Purchase and Sale dated October 10, 2023 (the “**Wilson APA**”) entered into between the Receiver and Syad Manosoor Ali Naqui in trust for a corporation to be formed, as purchaser (the “**Purchaser**”), in respect of the Wilson Property and the transaction contemplated therein (the “**Transaction**”). A copy of the

signed and a reading version of the Wilson APA are attached as **Confidential Appendix “1”**. A reading version of the Wilson APA is provided as the executed copy of the Wilson APA is mostly illegible;

- (d) review the Receiver and its legal counsel, Minden Gross LLP (“**Minden**”) accounts;
- (e) review legal opinions regarding the security registered against the Companies’ Property and Wilson Property by Canadian Imperial Bank of Commerce (“**CIBC**”) and 923944 Ontario Ltd. (“**923 Corp**”);
- (f) review the Receiver’s proposed distribution of the net sale proceeds from the Wilson Property to 923 Corp and CIBC;
- (g) the Receiver’s recommendation for an order (s), *inter alia*:
 - i. approving and authorizing the Receiver to complete the Wilson APA, as amended and approving the Transaction set out therein;
 - ii. authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing the Transaction;
 - iii. vesting Realty Co’s right, title and interest, if any, in and to the Wilson Property in the Purchaser, free and clear of any encumbrances, save and except as otherwise contemplated by the Wilson APA;
 - iv. approving the professional fees and disbursements of the Receiver and those of its independent legal counsel, Minden Gross LLP (“**Minden**”) as set out in the affidavits attached hereto;
 - v. approving the combined interim statement of receipts and disbursements for the Companies dated November 9, 2023;
 - vi. subject to closing the Transaction, authorizing the Receiver to make a distribution to Realty Co’s secured creditors as set out further below in this Report;
 - vii. approving the Receiver’s activities and those of its legal counsel, Minden, as outlined in this First Report;

- viii. Approving the sealing of the confidential appendices; and,
- ix. granting such further and other relief as counsel may advise and this Court may permit such other matters considered relevant to the Receiver's administration of these proceedings.

TERMS OF REFERENCE

6. Capitalized terms not otherwise defined herein shall have the meaning ascribed to that term pursuant to the Sale Process.

7. In preparing this First Report, the Receiver has relied on unaudited financial and other information regarding the Companies and their assets which includes, but is not limited to, the following information (collectively, the "**Information**"):

- (a) as set out in the various motion materials filed in these proceedings;
- (b) as provided by the Companies, which includes the available books and records;
- (c) as provided by CIBC and its legal counsel, Gowlings WLG LLP ("**Gowlings**");
- (d) as provided by Fogler Rubinoff LLP ("**Fogler**") as counsel to 923 Corp;
- (e) as provided by the meetings with Mr. Courtney Kazembe ("**Courtney**") and other former employees/contractors of K&A OpCo;
- (f) included in an appraisal of the Wilson Property obtained from Colliers International Realty Advisors Inc. ("**Colliers**");
- (g) obtained in discussions and negotiations with the CBRE Limited ("**CBRE**") and Hallmark Corbo & Kelos Group Realty Ltd. ("**Kelos**") that and realtors that provided listing proposals for the Wilson Property;
- (h) obtained in discussions with various parties that contacted the Receiver as prospective purchasers of certain of the Wilson Property;
- (i) obtained in discussions and negotiations between Kelos and the Purchaser of the Wilson Property; and
- (j) as otherwise available to the Receiver and its counsel, Minden.

8. 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.

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

K&A OPCO INITIAL ACTIVITIES

10. Prior to the Receiver's appointment, Courtney was the subject of various disciplinary and sanction proceedings commenced by the Law Society of Ontario (the "LSO") including that his license to practice law in Ontario was suspended.

11. Shortly after its appointment, the Receiver met with Courtney and his remaining employees/contractors including an associate lawyer that was carrying on K&A OpCo to review, among other things, the status of Kazembe OpCo practice including open engagements, available work in progress that could be invoiced, client file maintenance and security, and outstanding receivables.

12. At that time the Receiver took the necessary steps to limit access to the Wilson Property in order to, among other things, safeguard client files and related financial records. These steps including changing locks and alarm monitoring, ensuring suitable insurance coverage was in-place and dealing with critical office maintenance issues. To cover these costs, the Receiver borrowed funds from CIBC by way of a receiver borrowing certificate in the amount of \$10,000, which was subsequently partially repaid by \$6,244.00. The current balance of this receiver borrowing certificate is \$3,756.00, plus applicable interest.

13. The K&A Appointment Order excluded from K&A OpCo's Property the following:

- (a) any and all trust accounts held or operated by K&A OpCo;
- (b) any and all trust funds held by K&A OpCo; and
- (c) any and all current and former client files (excluding for greater certainty the receivables associated with such files, and time docket and other information the Receiver requires for the purposes of rendering accounts to the clients of the Debtor), stored as paper records, electronically or otherwise.

As a result, the Receiver only took steps to freeze K&A OpCo's general operating bank accounts.

Client Files and Trust Accounts – K&A OpCo

14. As prescribed by the K&A Appointment Order, the Receiver did not take possession of client files or trust accounts. On or about June 26, 2023, Courtney commenced the removal of all client files located at the Wilson Property and arranged for digital copies of relevant electronic client records.

15. With respect to the K&A OpCo's trust accounts, the Receiver understands that Courtney dealt directly with the relevant financial institutions regarding addressing the funds held in trust.

Realizations – K&A OpCo

16. With the assistance of K&A OpCo's remaining employee/contractors, K&A OpCo's open engagements, work in progress and accounts receivable records were reviewed to assess potential recoveries. Although the K&A OpCo's records reflected approximately \$61,300 (approximately \$33,300 was on a contingency fee basis) of WIP and \$57,000 of accounts receivable (collectively, the "Receivables"), Courtney advised that these records were highly unreliable, and the Receivables were in all likelihood not collectable. Additionally, and as will be discussed in greater detail below, it was discovered that K&A OpCo was indebted to Canada Revenue Agency ("CRA") in the amount of \$171,334.24 (as of July 27, 2023) in connection with its Harmonized Sales Tax ("HST") account. This indebtedness to CRA for HST would represent in whole or in part a deemed trust claim, which would have priority over the Receivables. Given the uncertainty of collectability of the Receivables and CRA's deemed trust claim, no further collection efforts were pursued.

17. In June 2023, an appraisal of the furniture and other office equipment located at the Wilson Property and belonging to K&A OpCo was obtained from Canam Appraiz Ltd. that indicated a gross forced liquidation value of \$2,610.00. Based on the anticipated removal and liquidation costs or disposal costs, the Receiver intends to abandon such assets.

18. Based on the Receiver's activities to date there do not appear to be any recoveries available from K&A OpCo's assets.

Employees/contractors – K&A OpCo

19. In the Receiver's initial meeting with Courtney, it was advised that K&A OpCo did not have any employees and that all of its staff were independent contractors that were paid up to-date. Consequently, there was no need to process any Wage Earner Protection Program claims for employees.

Statutory Priorities – K&A OpCo

20. On July 27, 2023, CRA sent a letter to the Receiver identifying an obligation on filed HST returns totaling \$171,334.24 associated with the periods ending December 31, 2017 to December 31, 2020 and that HST returns for the period January 1, 2021 to May 11, 2023 (the date of the Receiver's appointment of K&A OpCo) were outstanding.

21. Since there were no recoveries from K&A OpCo's assets, CRA's deem trust will not affect any potential distribution related to K&A OpCo.

REALTY CO INITIAL ACTIVITIES

22. The Receiver's activities since its appointment in respect of Realty Co in addition to those above for K&A OpCo have concentrated on:

- (a) obtaining an appraisal of the Wilson Property from Colliers;
- (b) conducting inspections of the property;
- (c) arranging for the transfer of the utilities associated to the Wilson Property into the Receiver's name;
- (d) arranging for the completion of minor repairs;
- (e) borrowing funds from CIBC by way of three (3) receiver borrowing certificates totaling \$44,594.69 to cover out-of-pocket costs associated with the occupancy of the Wilson Property;
- (f) obtaining a copy of the 2019 phase I (draft) and phase II environmental site assessment reports prepared by JFM Environmental Limited that were commissioned by Realty Co;

- (g) obtaining listing proposals for the Wilson Property from CBRE and Kelos;
- (h) completing the negotiation of a listing agreement (the “**Listing Agreement**”) for the Wilson Property;
- (i) entering into the Listing Agreement;
- (j) filing the statutory receivership reports based on the available information;
- (k) attend to correspondence from Foglers, counsel to 923 Corp.;
- (l) review offers received and consulting with Kelos and other stakeholders, which ultimately led to negotiating the Wilson APA; and
- (m) preparing this First Report.

Realty Co’s Assets and Liabilities

Assets

23. As noted earlier in this Report, the Receiver understands that the only asset that Realty Co has is the Wilson Property.

Liabilities

24. Based on a Property Tax Account Statement dated October 5, 2023 issued by the City of Toronto (the “**City**”), Realty Co appears to currently be indebted to the City in the amount of \$85,422.37, which would rank as a priority charge over the Wilson Property.

25. Based on materials filed with the Court by 923 Corp, CIBC and Arthur Bryan (“**Bryan**”), the Receiver understands that Realty Co. is indebted to 923 Corp, CIBC and Bryan in the minimum approximate amounts of \$1.16 million, \$1 million and \$400,000, respectively. An Ontario Parcel Registry search conducted on August 15, 2023 (the “**Title Search**”) by Minden, shows registered charges in favour of 923 Corp, CIBC and Bryan. On the face of the Title Search, the ranking of the registered charges it appears that 923 Corp is in first position, CIBC is in second position and Bryan is in third position. It should be noted that the Title search indicated that Bryan had a charge that pre-dated both the charges of 923 Corp and CIBC, but such charge of Bryan also is shown to have been discharged back on February 2, 2019 in advance of the registrations of both 923 Corp and CIBC.

26. An Ontario *Personal Property Security Act* registry search conducted by Minden (File Currency Date: August 14, 2023) (the “**PPSA Search**”) showed only registrations in favour of CIBC and consistent with a general security agreement.

27. The Receiver notes that Realty Co’s externally prepared financial statement (Notice to Reader) for the fiscal year ending June 30, 2018 indicates that there was a loan from the shareholder in the amount \$298,764. It is unclear if this indebtedness is still outstanding, increased or decreased or who exactly advanced loan. Notwithstanding, if such indebtedness is still outstanding, it does not appear to be secured, as the PPSA Search showed no registrations, other than those of CIBC.

28. In addition to the above, CRA sent a letter, dated November 8, 2023, advising the Receiver that it has assessed and notionally assessed Realty Co HST owing, including interest and penalties totaling \$103,503.77. Further, CRA indicated that none of this figure represented property of the Crown held in trust.

WILSON PROPERTY SALES PROCESS

Appraisal

29. Following its appointment an appraisal of Current Market Value of the Wilson Property on an “as-is” basis was obtained from Colliers (the “**Colliers Appraisal**”). A copy of the Executive Summary from the Colliers Appraisal is hereto attached as **Confidential Appendix “2”**.

Listing Proposals

30. Following receipt of the Colliers Appraisal, the Receiver invited listing proposals from CBRE and Kelos (the “**Listing Proposals**”), both well-established commercial realtors. A summary of the listing proposals is attached hereto as **Confidential Appendix “3”**.

Listing Agreement

31. Kelos was selected as broker (the “**Broker**”) based on:
- (a) the commission rate payable to the Broker;
 - (b) the Broker’s experience in smaller commercial properties;

- (c) the Broker's knowledge of the market; and
- (d) the Broker's view on the value of the Wilson Property.

32. The Receiver entered into a listing agreement with Kelos for the marketing and sale of the Wilson Property which listed the property for sale at \$1.7 million. A copy of the listing agreement dated August 29, 2023 for the Wilson Property is attached as **Appendix "C"**.

Wilson APA

33. On September 26, 2023, two entities presented conditional offers which are attached as **Confidential Appendix "4"**. Following consultations with Kelos, the Receiver did not counter these offers.

34. On October 3, 2023, the Purchaser presented its initial unconditional offer for the Wilson Property. Following consultation with Kelos, the Receiver and Kelos renegotiated the Purchaser's initial offer and entered into the Wilson APA. The key terms of the Wilson APA can be summarized as follows:

- (a) Includes all of the standard/typical terms and conditions associated with a sale conducted under an insolvency proceeding;
- (b) The purchase price is in the range expected based on the Colliers Appraisal and the Listing Proposals;
- (c) A deposit of \$100,000.00;
- (d) Subject to Court approval and the granting of an Approval and Vesting Order ("**AVO**"); and,
- (e) Closing of the Transaction is to occur on the thirtieth (30th) day following the date of the AVO.

35. The Receiver recommends that the Court approve the Wilson APA, and authorize the Receiver to complete the Transaction set out therein, for the following reasons:

- (a) the Wilson Property was listed for sale by the Receiver and advertised to a wide group of prospective purchasers;

- (b) by listing the Wilson Property multiple offers were received and compared inherently maximizing sale value;
- (c) the ultimate purchase price compares favorably to the appraised current market value;
- (d) the secured debt of the apparent first mortgagee 923 Corp will be repaid in full and supports completion of the contemplated transaction; and
- (e) CIBC the apparent 2nd position mortgagee will likely suffer a shortfall on its security and CIBC supports the relief being sought by the Receiver.

36. The Receiver is satisfied that completion of the Wilson APA resulted from an efficient process which allowed for sufficient time for the Property to be exposed to the market in order to maximize the value of the Wilson Property.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

37. A combined Interim Statements of Receipts and Disbursements as at November 30, 2023 covering both K&A OpCo and Realty Co (the “**R&D**”) is attached hereto as **Appendix “D”**. The R&D reports combined net receipts over disbursements, as at November 9, 2023, of \$119,263.06, which principally represents the deposit received under the Wilson APA and the net balance of the funds advanced under receiver borrowing certificates The Receiver respectfully requests that the Court approve the R&D.

RECEIVER AND COUNSEL PROFESSIONAL FEES

38. The Receiver has provided services and incurred disbursements in respect of the Companies during the period to October 31, 2023 totaling \$83,280.77 inclusive of disbursements and applicable HST as set out in the affidavit of Jerry Henechowicz, sworn November 9, 2023 (the “**Henechowicz Affidavit**”). A copy of the Henechowicz Affidavit is attached hereto as **Appendix “E”**.

39. Additionally, the Receiver has incurred legal fees of its legal counsel, Minden, in respect of these proceedings, during the period to October 26, 2023 totaling \$21,436.91 inclusive of disbursements and applicable HST as set out in set out in the affidavit of Timothy Dunn, sworn November 9, 2023 (the “**Dunn Affidavit**”). A copy of the Dunn Affidavit attached hereto as **Appendix “F”**.

40. The Receiver requests that this Court approve the accounts of the Receiver and its legal counsel as set out in the Henechowicz Affidavit and the Dunn Affidavit (collectively, the “**Professional Fees**”).

41. The Receiver submits that the Professional Fees are reasonable in the circumstances and have been or will be validly incurred in accordance with the provisions of K&A Appointment Order and Realty Co Appointment Order.

SECURITY OPINIONS

42. Minden provided an opinion regarding the mortgage security held by 923 Corp. Subject to the standard qualifications and assumptions, Minden has opined that 923 Corp’s mortgage security is valid and enforceable pursuant to its terms.

43. Minden has also provided an opinion regarding the mortgage security held by CIBC. Subject to the standard qualifications and assumptions, Minden has opined that CIBC’s mortgage security is valid and enforceable pursuant to its terms.

44. A copy of the Wilson Property parcel registry indicates that 923 Corp’s mortgage security was registered in priority to any other security. CIBC’s mortgage security is the second registration in time. Absent any inter-creditor agreements, Minden is of the view that 923 Corp has the senior secured mortgage security followed by CIBC. A copy of the parcel register is attached as **Appendix “G”**.

45. The Title Search indicates a charge in the amount of \$200,000 registered in favour of Bryan dated August 19, 2022 bearing Instrument No. AT6163499. Bryan delivered responding materials on the application to appoint the Receiver. In those materials, Bryan sought to cap the professional fees of the Receiver and its counsel as he raised concerns about the “erosion of equity”. In those materials, Bryan also indicates that he had an earlier charge registered against the Wilson Property which was discharged without his knowledge or consent, and without payment to him. The Receiver’s counsel, Minden, recently reached out to Bryan’s counsel with respect to Bryan’s position on this motion. As at the date of this Report, no response has been received from Bryan’s counsel.

PROPOSED DISTRIBUTION

46. The Realty Co Appointment Order provided that an administrative charge for up to \$75,000.00 of the Receiver’s fee and disbursements in connection with the sale of the Wilson Property would be paid in priority to the secured claim of 923 Corp. Additionally, the receiver’s

borrowing certificates issued pursuant to the Realty Co Appointment and totalling \$4,494.69 plus applicable interest, would also rank and need to be paid in priority to the secured claim of 923 Corp.

47. Subject to closing the Transaction and based on quantum of the Purchase Price, net of commission, and given the priority charges, there appears to be sufficient net proceeds to repay the indebtedness to 923 Corp in full. Accordingly, the Receiver proposes to distribute funds to 923 Corp, up to the indebtedness due to 923 Corp.

48. The Receiver proposes to distribute the balance of Wilson Property sale proceeds to CIBC less a holdback of \$50,000 to cover the Receiver and its counsel's estimated fees, disbursements and applicable taxes to complete the administration of these proceedings.

SEALING ORDER

49. The Receiver requests that the confidential appendices be sealed until the closing of the transaction. The sealing order is being sought in order to protect commercially sensitive information. Disclosure of such information could jeopardize the transaction or the Receiver's ability to market the property if the transaction does not close.

CONCLUSION AND RECOMMENDATION

50. Based on the foregoing and as outlined in this First Report, the Receiver respectfully requests that this Court issue an order providing the relief set out in this First Report as follows:

- x. approving and authorizing the Receiver to complete the Wilson APA, as amended and approving the Transaction set out therein;
- xi. authorizing the Receiver to take such steps as are necessary and appropriate to facilitate the closing the Transaction;
- xii. vesting Realty Co's right, title and interest, if any, in and to the Wilson Property in the Purchaser, free and clear of any encumbrances, save and except as otherwise contemplated by the Wilson APA;

- xiii. approving the professional fees and disbursements of the Receiver and those of its independent legal counsel, Minden, as set out in the affidavits attached hereto;
- xiv. approving the interim statement of receipts and disbursements for each of the Companies dated October 31, 2023;
- xv. subject to closing the Transaction, authorizing the Receiver to make a distribution to Realty Co's secured creditors as set out further below in this Report;
- xvi. approving the Receiver's activities and those of its legal counsel, Minden, as outlined in this First Report; and,
- xvii. approving the sealing of the confidential appendices until the closing of the transaction.

All of which is respectfully submitted this 10th day of November 2023.

MNP LTD.

Court-appointed Receiver of

Kazembe and Associates Professional Corporation and 1340182 Ontario Limited

Per:



Jerry Henechowicz CPA, CA, CIRP, LIT
Senior-Vice President

APPENDIX D

Court File No. CV-23-00698539-00CL

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

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

**1340182 ONTARIO LIMITED AND
KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION**

Respondents

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

**SUPPLEMENTARY REPORT TO THE FIRST REPORT OF MNP LTD. AS RECEIVER
OF THE ASSETS, UNDERTAKINGS AND PROPERTIES OF THE RESPONDENTS**

November 16, 2023

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Appendix “A” 923 Corp November 9, 2023 Payout Statement

Appendix “B” CIBC November 9, 2023 Payout Statement

INTRODUCTION

1. This report is supplementary to and should be read in conjunction with the First Report of the Receiver dated November 10, 2023 (“**Supplementary Report**”).
2. The same defined terms will be used in this Supplementary Report as in the First Report of the Receiver, unless defined otherwise.

PURPOSE OF SUPPLEMENTARY REPORT

3. This Supplementary Report is filed to provide this Honourable Court with an update regarding the Companies’ indebtedness to 923 Corp and CIBC as provided by same and the Receiver’s proposed distribution to 923 Corp and CIBC (the “**Mortgagee Distribution**”).
4. The Receiver files this supplementary report in support of its motion for an order providing the relief set out in paragraph 50 of the First Report and the Mortgagee Distribution.

923 CORP AND CIBC SECURED DEBT

5. As set out in paragraphs 42 to 44 of the First Report, Minden has opined that, subject to the standard qualifications and assumptions:
 - (a) 923 Corp and CIBC’s mortgage security is valid and enforceable pursuant to its terms; and
 - (b) that the Wilson Property parcel registry indicates that 923 Corp’s mortgage security was registered in priority to any other security. CIBC’s mortgage security is the second registration. Absent any inter-creditor agreements, Minden is of the view that 923 Corp has the senior secured mortgage security followed by CIBC.
6. 923 Corp’s November 9, 2023 payout statement totaling \$1,234,350.07 is attached hereto as **Appendix “A”**. CIBC’s November 9, 2023 payout statement totaling \$1,089,797.22 is attached hereto as **Appendix “B”**.

7. Given the recent receipt of the payout statements, these statements have not been previously sent to mortgagee counsel. Upon a review, it may be that such counsel have questions or comments in respect of the amounts being claimed as owing.

8. Subject to the closing of the Transaction and based on the quantum of the Purchase Price, net of commissions, priority charges and the proposed hold back of \$50,000 to cover the Receiver's and its counsel's estimated fees, disbursements and applicable taxes to the completion of the administration of these proceedings, the Receiver proposes to distribute to 923 Corp the full indebtedness of its debt and any remaining balance to CIBC.

CONCLUSION

9. The Receiver has prepared this Supplementary Report in support of the relief sought in paragraph 50 of the First Report and the Mortgagee Distribution set out above.

All of which is respectfully submitted this 16th day of November, 2023.

MNP LTD.
Court-appointed Receiver of
Kazembe & Associates Professional
Corporation and 1340182 Ontario Inc.



Per:

Jerry Henechowicz CPA, CA, CIRP, LIT
Senior-Vice President

APPENDIX E

Court File No. CV-23-00698539-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	WEDNESDAY, THE 22 nd
)	
JUSTICE CAVANAGH)	DAY OF NOVEMBER, 2023

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

1340182 ONTARIO LIMITED and KAZEMBE & ASSOCIATES
PROFESSIONAL CORPORATION

Respondents

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 of all of the undertakings, property and assets of Kazembe & Associates Professional Corporation and 1340182 Ontario Limited (the “**Receiver**”), was heard this day at 330 University Avenue, Toronto, Ontario.

UPON READING the Notice of Motion, the reports of the Receiver dated November 10, 2023 and November 16, 2023 (the “**Report**”), and on hearing submissions of counsel for the Receiver, Applicant, 923944 Ontario Ltd., and Arthur Bryan, no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Hayley Morgan sworn November 10, 2023 and November 16, 2023, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, Motion Record, and Supplementary Motion Record of the Receiver is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Report and the conduct and activities of the Receiver, and its counsel, Minden Gross LLP, as described in the Report, are hereby approved.
3. **THIS COURT ORDERS** that the confidential appendices to the Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, pending the closing of the sales transaction contemplated in the Receiver’s First Report.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, Minden Gross LLP, as set out in the Report and the Fee Affidavits are hereby approved.

5. **THIS COURT ORDERS** that the interim statement of receipts and disbursements dated November 9, 2023 is hereby approved.

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE
Applicant

-and-

1340182 ONTARIO LIMITED et al.
Respondents
Court File No. CV-23-00698539-00CL

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

Proceeding commenced at Toronto

ORDER

MINDEN GROSS LLP

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Lawyers for the Receiver, MNP Ltd.

APPENDIX F

Court File No. CV-23-00698539-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEDNESDAY, THE 22 nd
)	
JUSTICE CAVANAGH)	DAY OF NOVEMBER, 2023

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

**1340182 ONTARIO LIMITED and KAZEMBE & ASSOCIATES PROFESSIONAL
CORPORATION**

Respondents

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by **MNP Ltd.**, in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Kazembe & Associates Professional Corporation and 1340182 Ontario Limited (collectively the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and 1000563411 Ontario Inc., (the "**Purchaser**") dated October 3, 2023 and appended to the Report of the Receiver dated November 10, 2023 (the "**Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, Applicant, 923944 Ontario Ltd., and Arthur Bryan, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Hayley Morgan sworn November 10, 2023, 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 the Purchaser.
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 Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, 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 Justice Osborne dated May 11, 2023 and the Order of the Honourable Justice Steele dated June 22, 2023; (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 the City of Toronto (No. 66) of an Application for Vesting in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser 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 Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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 Debtor and shall not be void or voidable by creditors of the Debtor, 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.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-23-00698539-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

- and -

**1340182 ONTARIO LIMITED and KAZEMBE & ASSOCIATES PROFESSIONAL
CORPORATION**

Respondents

**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****RECEIVER’S CERTIFICATE****RECITALS**

A. Pursuant to an Order of the Honourable Justice Osborne dated May 11, 2023 and the Order of the Honourable Justice Steele dated June 22, 2023 of the Ontario Superior Court of Justice (the "**Court**"), MNP Ltd. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of 1340182 Ontario Limited and Kazembe & Associates Professional Corporation (collectively the "**Debtor**").

B. Pursuant to an Order of the Court dated November 22, 2023, the Court approved the agreement of purchase and sale made as of October 3, 2023 (the "**Sale Agreement**") between the Receiver and 1000563411 Ontario Inc. (the "**Purchaser**"), and provided for the vesting in the Purchaser of the Debtor’s right, title and interest 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 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 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 undertaking, property and assets of Kazembe & Associates Professional Corporation and 1340182 Ontario Limited, and not in its personal capacity

Per: _____
Name:
Title:

Schedule B – Purchased Assets

PIN 10289-0036(LT)

LT 50 PL 1953 TWP OF YORK EXCEPT PT 14 EXPROP PL 7124 (NY431267); TORONTO (N YORK) ,
CITY OF TORONTO

Municipally known as: 1888 Wilson Avenue, Downsview, Ontario

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

1. Instrument No. AT5108239 registered April 4, 2019 - Charge in principal amount of \$1,000,000 in favour of 923944 Ontario Ltd.
2. Instrument No. AT5203051 registered August 1, 2019 - Charge in principal amount of \$945,000 in favour of Canadian Imperial Bank of Commerce.
3. Instrument No. AT6163499 registered August 8, 2022 - Charge in principal amount of \$200,000 in favour of Arthur Bryan.

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

(unaffected by the Vesting Order)

1. Instrument No. TR57844 registered March 27, 2000 – Notice in favour of HER MAJESTY THE QUEEN IN RIGHT OF THE DEPARTMENT OF TRANSPORT CANADA – PEARSON AIRPORT ZONING REGULATIONS

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE
Applicant

- and -

1340182 ONTARIO LIMITED et al.
Respondents
Court File No. CV-23-00698539-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

MINDEN GROSS LLP
Barristers and Solicitors
145 King Street West, Suite 2200
Toronto, ON M5H 4G2

Timothy R. Dunn (LSO# 342491)
tdunn@mindengross.com
Tel: 416-369-4335

Sepideh Nassabi (LSO# 60139B)
snassabi@mindengross.com
Tel: 416-369-4323

Lawyers for the Receiver, MNP Ltd.

APPENDIX G

Vendor: MNP Ltd.

Purchaser: 1000563411 Ontario Inc.

Property: 1888 Wilson Ave., Toronto, Ontario

Adjusted as of: January 15, 2024

	Credit Purchaser	Credit Vendor
<u>SALE PRICE</u>		\$1,565,000.00
<u>DEPOSIT</u>	\$100,000.00	
<u>HST ON SALE PRICE</u>		
Federal Portion: 5.0% of \$1,565,000.00	\$78,250.00	
Ontario Portion: 8.0% of \$1,565,000.00	\$125,200.00	
Credit Vendor		\$203,450.00
<u>REALTY TAXES</u>		
2023 total taxes	\$13,281.85	
Estimated Increase for 2024	5.50%	
Estimated 2024 taxes	\$14,012.35	
Vendor has paid	\$0.00	
Vendor's share for 14 days	\$537.46	
Credit Purchaser	\$537.46	
<u>EXTENSION FEE</u>		
*Paid Prior to Closing by Purchaser – No Adjustment required	\$5,400.00	
<u>BALANCE DUE ON CLOSING</u>		
Payable to Minden Gross LLP, in trust or as further directed	\$1,667,912.54	
<u>E.&O.E.</u>	\$1,768,450.00	\$1,768,450.00

STATEMENT OF FUNDS

January 8, 2024

MNP Ltd.
1900-1 Adelaide St. E.
Toronto, ON
M5C 2V9

Re: MNP Ltd. (the “**Vendor**”) sale to 1000563411 Ontario Inc. (the “**Purchaser**”) pursuant to an agreement of purchase and sale dated October 3, 2023, as may be amended from time to time (the “**Purchase Agreement**”) of those lands and premises legally described in PIN 10289-0036 (LT) and municipally known as 1888 Wilson Ave., North York, Ontario (the “**Property**”)
Our Matter No.: 4132773

Received from the Purchaser’s Lawyer Extension Fee	\$5,400.00
---	------------

Received from the Purchaser’s Lawyer Balance Due on Closing (from the Statement of Adjustments)	\$1,667,912.54
--	----------------

Paid Broker’s Commission to Re/Max Hallmark Corbo & Kelos Group Realty Ltd. (\$54,775.00 + HST of \$7,120.76)	\$61,895.76
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Paid Property Tax Arrears to City of Toronto (Outstanding Taxes as per the Tax Certificate dated January 3, 2024)	\$87,927.59
--	-------------

PAID TO CLIENT: <i>(payable by wired funds)</i>	\$1,523,489.19
--	-----------------------

MS:jm
E. & O. E.

#6068766 / 4132773

Draft – Statement of Funds

APPENDIX H

**IN THE MATTER OF THE RECEIVERSHIP OF KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION AND
1340182 ONTARIO LIMITED
COMBINED INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD ENDED MARCH 27, 2024**

	COMBINED	KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION	1340182 ONTARIO LIMITED
RECEIPTS			
Sale of Property	\$ 1,569,778.76	\$ -	\$ 1,569,778.76
HST collect	204,071.24	-	204,071.24
Advance from Secured Creditor	48,320.69	3,756.00	44,564.69
Interest earned	10,019.56	80.26	9,939.30
Cash in bank	285.65	285.65	-
	1,832,475.90	4,121.91	1,828,353.99
DISBURSEMENTS			
Property taxes	88,465.05	-	88,465.05
Receiver's fees & disbursements	73,699.80	-	73,699.80
Repayment of Secured Creditor Advances	44,594.69	-	44,594.69
Realtor commissions	54,775.00	-	54,775.00
Legal fees & disbursements	50,725.31	-	50,725.31
Insurance	27,405.00	-	27,405.00
HST paid	24,663.00	220.58	24,442.42
Utilities	8,123.80	-	8,123.80
Appraisal fees	5,700.00	1,200.00	4,500.00
Repairs & maintenance	2,090.00	-	2,090.00
Security	259.50	-	259.50
Locksmith	952.00	367.00	585.00
Redirection of mail	319.51	319.51	-
Filing fees	150.60	75.30	75.30
Security service	129.75	129.75	-
Bank charges	54.00	17.50	36.50
	382,107.01	2,329.64	379,777.37
EXCESS OF RECEIPTS OVER DISBURSEMENTS	\$ 1,450,368.89	\$ 1,792.27	\$ 1,448,576.62

**IN THE MATTER OF THE RECEIVERSHIP OF KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION AND
1340182 ONTARIO LIMITED
COMBINED INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
AS AT OCTOBER 31, 2023**

	COMBINED	KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION	1340182 ONTARIO LIMITED
RECEIPTS			
Purchaser deposit	\$ 100,000.00	\$ -	\$ 100,000.00
Advance from Secured Creditor	25,397.33	10,000.00	15,397.33
Cash in bank	285.65	285.65	-
Interest earned	53.26	53.26	-
	125,736.24	10,338.91	115,397.33
DISBURSEMENTS			
Insurance	19,575.00	-	19,575.00
Appraisal fees	5,700.00	1,200.00	4,500.00
Locksmith	952.00	367.00	585.00
Redirection of mail	319.51	319.51	-
HST paid	220.58	220.58	-
Filing fees	150.60	75.30	75.30
Security service	129.75	129.75	-
Bank charges	35.00	17.50	17.50
	27,082.44	2,329.64	24,752.80
EXCESS OF RECEIPTS OVER DISBURSEMENTS	\$ 98,653.80	\$ 8,009.27	\$ 90,644.53

APPENDIX I

Court File No. CV-23-00698539-00CL

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

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

**1340182 ONTARIO LIMITED AND
KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION**

Respondents

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

AFFIDAVIT OF JERRY HENECHOWICZ

(Sworn March 27, 2024)

I, Jerry Henechowicz, of the City of Markham, in the Province of Ontario,

MAKE OATH AND SAY AS FOLLOWS:

1. I am a Senior Vice President and a licensed Trustee with MNP Ltd. the Court-appointed receiver (the “**Receiver**”) of Kazembe & Associates Professional Corporation (“**K&A**”) & 1340182 Ontario Limited (“**134**” together with K&A the “**Companies**”) and as such have knowledge of the matters deposed to herein, except where such knowledge is stated to be based on information and belief, in which case I state the source of the information and verily believe such information to be true.
2. The Receiver was appointed, without security, of the assets, property and undertaking of the K&A by Order of the Honourable Justice Osborne dated May 11, 2023.
3. The Receiver was appointed, without security, of the assets, property and undertaking of the 134 by Order of the Honourable Justice Steele dated June 22, 2023.

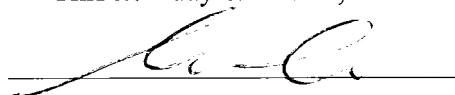
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF JERRY HENECHOWICZ

Sworn before me at the City of Toronto

This 27th day of March, 2024

A handwritten signature in black ink, appearing to be 'A.C.', is written over a horizontal line.

Commissioner for taking Affidavits, etc

**RECEIVERSHIP OF KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION
AND 1340182 ONTARIO LIMITED
SUMMARY OF STATEMENT OF ACCOUNT OF
MNP LTD IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER
FOR THE PERIOD NOVEMBER 1, 2023 TO FEBRUARY 29, 2024**

MNP INVOICE	DATE	HOURS	FEES	DISBURSEMENTS	HST	TOTAL
11530491	27-Mar-24	56.60	28,491.00	-	3,703.83	32,194.83
		56.60	\$ 28,491.00	\$ -	\$ 3,703.83	\$ 32,194.83

Average Hourly Rate

\$ 503.37

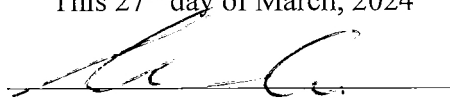
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF JERRY HENECHOWICZ

Sworn before at the City of Toronto

This 27th day of March, 2024

A handwritten signature in black ink, appearing to be "A.C.", written over a horizontal line.

Commissioner for taking Affidavits, etc

Invoice

Invoice Number : 11530491 Client Number : 1015879
 Invoice Date : Mar 27 2024 Invoice Terms : Due Upon Receipt

1340182 Ontario Limited and Kazembe & Associates Professional
 Corporation
 c/o MNP Ltd
 1 Adelaide Street East
 Suite 1900
 Toronto, ON M5C 2V9

For Professional Services Rendered :

Professional services as Court Appointed Receiver of Kazembe & Associates Professional Corporation and 1340182 Ontario Limited for the period ended February 29, 2024 as set out on the attached time and billing summary.	28,491.00
Harmonized Sales Tax :	<u>3,703.83</u>
Total (CAD) :	<u>32,194.83</u>

HST Registration Number: 103697215 RT 0001

Invoices are due and payable upon receipt.

Thank you for your business. We
 sincerely appreciate your trust in us.

Licensed Insolvency Trustees
 1 ADELAIDE ST E, SUITE 1900; TORONTO ON; M5C 2V9
 P: (416) 596-1711 F: (416) 596-7894 www.MNPDebt.ca

MNP LTD.

COURT APPOINTED RECEIVER OF KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION AND
1340182 ONTARIO LIMITED

FOR THE PERIOD NOVEMBER 1, 2023 TO FEBRUARY 29, 2024

DATE	PROFESSIONAL	HOURS	DESCRIPTION
01-Nov-2023	Akhil Kapoor	.50	1) Discussion re expenses to be paid for Bell, Hydro, Alarm Co and Enbridge
02-Nov-2023	Jerry Henechowicz	1.00	Additional report drafting
02-Nov-2023	Matthew Lem	.40	Kazembe - call to Assessment Office; Email to Assessment Office re Assessment Hearing scheduled for November 15, 2023.
02-Nov-2023	Chahna Nathwani	.20	Prepare cheque requisition for FCA insurance, processed cheques in Ascend for signing, printed and mailed
06-Nov-2023	Jerry Henechowicz	1.20	Drafting of 1st report, call with Minden re filing, review of security opinions
07-Nov-2023	Jerry Henechowicz	3.00	Preparation of first report and appendices
07-Nov-2023	Upasana Nayak	.60	Discussed with Akhil about the utility invoices to be paid. Corrected invoices and sent to Akhil for review.
07-Nov-2023	Akhil Kapoor	.40	Payment requisitions and prorating them for the post receivership period for Enbridge, Alectra and API Alarm
08-Nov-2023	Jerry Henechowicz	2.50	Report drafting
08-Nov-2023	Matthew Lem	1.20	Review correspondence from T. Dunn; review correspondence from CRA; review draft report to Court
09-Nov-2023	Jerry Henechowicz	2.50	completion of report and appendices, call with Minden Gross to review
09-Nov-2023	Matthew Lem	2.40	Review and adjust report; prepare R&D; forwards same to Minden Gross
09-Nov-2023	Upasana Nayak	.70	1) Prepare excel summary of WIP and invoices. 2) Called Reliance because of "final bill" received. Receivership accounts have not been set up. Followed up with an email to UAdmin@reliance.com
13-Nov-2023	Matthew Lem	.30	Discussion with K. Golding re third party furniture; discussion with Appledale re invoice for services; discussion C. Kelos re inspections;
14-Nov-2023	Jerry Henechowicz	.50	Review of account statements from CIBC and 923 Corp, drafting of supplementary report
15-Nov-2023	Jerry Henechowicz	1.00	Drafting of supplementary report
15-Nov-2023	Matthew Lem	.10	Review and approve payments.
15-Nov-2023	Upasana Nayak	.70	Call with Akhil to discuss effective start date regarding post-receivership utility invoices. Update requisitions to pay Bell, Hydro and Enbridge to account for May 11 effective start date. Call Bell to confirm the service provided is only for Bell.
15-Nov-2023	Akhil Kapoor	.60	1) Discussion with Matt re Enbridge, Hydro and Bell invoices, adjusting the period of invoices. Confirmed that Bell's account is only active for wifi and all other services have been disconnected.
16-Nov-2023	Jerry Henechowicz	1.20	Completion of supplementary report and forwarding same to Minden Gross for service
16-Nov-2023	Chahna Nathwani	.40	Processed cheques in Ascend for signing, printed cheques and mailed with respective invoices

**MNP LTD.
COURT APPOINTED RECEIVER OF KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION AND
1340182 ONTARIO LIMITED**

FOR THE PERIOD NOVEMBER 1, 2023 TO FEBRUARY 29, 2024

DATE	PROFESSIONAL	HOURS	DESCRIPTION
17-Nov-2023	Jerry Henechowicz	.70	Review of "3rd Mortgage" motion record, multiple emails on point between various counsel on point
17-Nov-2023	Chahna Nathwani	.40	Website uploading of factum, service list and motion record
20-Nov-2023	Jerry Henechowicz	.30	Review of email exchanges related to position of 3rd mortgagee on distribution
20-Nov-2023	Matthew Lem	.20	Review of correspondence received
20-Nov-2023	Matthew Lem	.10	Confirm location of computer to be returned with C. Spencer; pick up same computer.
21-Nov-2023	Jerry Henechowicz	.50	Emails and calls related to Court attendance and objections raised by 3rd Mortgagee
21-Nov-2023	Matthew Lem	1.10	Attend property; preparation of receipt acknowledgment; meet with K. Goldmane re removal of additional items; inspect premises;
21-Nov-2023	Upasana Nayak	1.70	Bell inquired about date of payment. Received invoice from Appledale, toronto hydro and Enbridge. Prepared cheque requisitions to pay Appledale property management and Toronto Hydro. Send requisitions for payment updated tracking sheet.
22-Nov-2023	Jerry Henechowicz	1.00	Preparation for, attendance and follow up on sale approval motion
22-Nov-2023	Matthew Lem	.20	Review court orders and endorsements received; arrange for posting to website;
22-Nov-2023	Akhil Kapoor	.10	Discussion re Hydro invoice and Apple Management invoices (requisition to be prepared)
23-Nov-2023	Chahna Nathwani	.50	Uploading docs to webpage as per M. Lem email
28-Nov-2023	Upasana Nayak	.80	Prepare cheque requisitions to pay Enbridge and FCA insurance.
29-Nov-2023	Upasana Nayak	.10	Check bank account to make sure advance from CIBC was deposited into retainer account.
29-Nov-2023	Akhil Kapoor	.10	Discussion with Upasana re certain invoice matters and receipt of funds in the account from retainer/sale of assets (first installment)
04-Dec-2023	Matthew Lem	.20	Discussion with T. Dunn re closing issues and Mr. Kazembe's furniture.
07-Dec-2023	Upasana Nayak	.70	Prepared cheque requisition for revenue service-waste management. Updated toronto hydro invoice to include late fees. Sent all outstanding cheque requisitions to Matthew for approval.
08-Dec-2023	Jerry Henechowicz	.30	Emails related to closing agenda
08-Dec-2023	Matthew Lem	.10	Attend to correspondence from T. Dunn of Minden Gross re extension request from purchaser; email to Gowlings re same.
12-Dec-2023	Matthew Lem	.10	Respond to T. Dunn's inquiry about and extension for closing.

**MNP LTD.
COURT APPOINTED RECEIVER OF KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION AND
1340182 ONTARIO LIMITED**

FOR THE PERIOD NOVEMBER 1, 2023 TO FEBRUARY 29, 2024

DATE	PROFESSIONAL	HOURS	DESCRIPTION
12-Dec-2023	Upasana Nayak	.30	Prepare transfer and deposit voucher for advance received from CIBC in Oct 27, 2023.
13-Dec-2023	Jerry Henechowicz	.30	Emails related to extension of the closing date
13-Dec-2023	Matthew Lem	.30	Correspondence with Gowlings re extension; call to T. Dunn; review file;
14-Dec-2023	Matthew Lem	.20	Attend to approval of disbursements
15-Dec-2023	Matthew Lem	.10	Correspondence with Minden Gross re property taxes;
18-Dec-2023	Upasana Nayak	.10	Received notice from waste management but confirmed that cheque was sent. Update tracker.
21-Dec-2023	Upasana Nayak	.20	Forward urgent property tax notice to Akhil and Matt.
21-Dec-2023	Upasana Nayak	.20	Verify utility invoices and OSB fees O/s and arrange payment
21-Dec-2023	Akhil Kapoor	.10	1) Brief discussion with Upasana re property tax notice, to advise Matt, discussed payment of various utility invoices
21-Dec-2023	Yujun liu	1.50	cheque requisitions, previous payment check, and record them in ascend - a.p.i alarms, Enbridge, and toronto hydro
22-Dec-2023	Upasana Nayak	.40	check requisitions prepared by Yujun, prepare Enbridge calculations, send advice back to Yujun.
22-Dec-2023	Yujun liu	.60	recalculate payment amounts and adjust them in ascend for Toronto Hydro and Enbridge
27-Dec-2023	Matthew Lem	.10	Approve cheques; email to K. Golding;
02-Jan-2024	Matthew Lem	.10	Attend to correspondence from FCA re insurance coverage; follow-up with T. Dunn re closing and payment from purchaser for additional holding costs; review correspondence from Minden Gross in response.
03-Jan-2024	Lisa Visconti	.10	BANK REC
05-Jan-2024	Matthew Lem	.20	Discussion with Minden Gross re closing sale and next steps
05-Jan-2024	Akhil Kapoor	.10	1) Discussion with Chahna re payment of insurance invoice for Dec 2023 and other expenses as per the tracker.
08-Jan-2024	Lisa Visconti	.20	BANK RECS
08-Jan-2024	Matthew Lem	.90	Assemble and send to Minden Gross utilities details; follow-up with staff re outstanding matters and final meter readings; review draft closing documents; discussion with C. Kelos re keys;
08-Jan-2024	Upasana Nayak	.20	Email with Matthew and Akhil regarding reliance home comfort. Follow up email sent to reliance comfort.
08-Jan-2024	Akhil Kapoor	.10	1) Discussion with Upasana re preparation of the email to be sent to all the utilities to advise them of closing on Jan 15 and to obtain all unpaid post receivership invoices 2) Email with Matt re unpaid invoices of Reliance and other updates on closing

**MNP LTD.
COURT APPOINTED RECEIVER OF KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION AND
1340182 ONTARIO LIMITED**

FOR THE PERIOD NOVEMBER 1, 2023 TO FEBRUARY 29, 2024

DATE	PROFESSIONAL	HOURS	DESCRIPTION
08-Jan-2024	Chahna Nathwani	.40	Prepared chq req for insurance payment, fwd to M. Lem for approval, processed chq in system for signing, printed chq and mailed
09-Jan-2024	Matthew Lem	.10	Review revised draft closing documents prepared by Minden Gross
09-Jan-2024	Upasana Nayak	.40	Provide contact information and request Yujun to call service providers to take latest meter reading. Prepare draft email to send to services providers upon closing.
09-Jan-2024	Akhil Kapoor	.20	1) Discussion with Matt and team re proposed closing of the sale transaction on Jan 15 and to inform all the utilities to take final meter reading (calls to be made by Yujun today and tomorrow)
09-Jan-2024	Yujun liu	1.20	Call the utility providers to do the final meter reading and close the account on Jan 15
10-Jan-2024	Upasana Nayak	.20	Discuss progress on calling service providers. Assist Yujun in her calls to service providers.
10-Jan-2024	Yujun liu	.50	continue to call the utility providers to request a final meter read and close the account by Jan 15th
11-Jan-2024	Matthew Lem	.40	Discussion with K. Golding re removal of property belonging to Yvonne and Kazembe; correspondence and provide documents to Minden Gross for sale closing
11-Jan-2024	Upasana Nayak	.10	Assist Yujun in finding information in making calls to Toronto Waste and Revenue.
12-Jan-2024	Matthew Lem	2.50	Attend premises to remove computer s and third party property before sale closing; speak with buyer re property of Yvonne and Kazembe;
12-Jan-2024	Upasana Nayak	.10	Received utility invoices; reviewed and saved. Request Yujun to prepare requisitions for payment.
12-Jan-2024	Akhil Kapoor	.10	1)Discussion with Yujun re notice to be sent to Toronto Hydro, Enbridge and waste management company regarding the transaction closure on Mon, Jan 15.
12-Jan-2024	Yujun liu	.40	called and emailed to utility providers to do the final meter read and close the account by 15th,2023
15-Jan-2024	Matthew Lem	.30	Update stakeholders on sale closing; follow-up with MNP on closing steps for property for cut-off; follow-up on receipt of funds from sale closing;
15-Jan-2024	Upasana Nayak	.70	Update notice of closing email drafted to reflect changes suggested by A. Kapoor. Confirm which accounts are registers under which company name. Send email to A. Kapoor with information and updated closing email draft. Update tracker in the file. Email Reliance to inform them of sale of property. E
15-Jan-2024	Akhil Kapoor	.30	1)Discussion regarding the closing (closing sale transaction) for Kazembe, to inform all suppliers incl. utilities, final meter readings and related matters.
15-Jan-2024	Yujun liu	.80	prepare cheque requestions for utility providers and record the transactions in ascend
15-Jan-2024	Yujun liu	.70	called the utility providers to check the progress of closing account
16-Jan-2024	Matthew Lem	.20	Follow-up on receipt of closing funds; preparation of posting for closing funds;

**MNP LTD.
COURT APPOINTED RECEIVER OF KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION AND
1340182 ONTARIO LIMITED**

FOR THE PERIOD NOVEMBER 1, 2023 TO FEBRUARY 29, 2024

DATE	PROFESSIONAL	HOURS	DESCRIPTION
16-Jan-2024	Upasana Nayak	.80	Emails with bell to inform them off the sale of property and to close the account. Call and email Api Alarm to cancel account and inform them of the sale of property. Call and email TD to find out why wire to be received has not been posted in the account yet. Prepare receipt voucher for approval.
16-Jan-2024	Akhil Kapoor	.10	Discussion with Matt and dropping an email to FCA to advise them to cancel insurance and to ask them if any cancellation form needs to be filled
16-Jan-2024	Chahna Nathwani	.10	Mailing cheques for the utilities
17-Jan-2024	Matthew Lem	.20	Attend to correspondence form Minden Gross re transfer of reliance services; attend approval of final disbursements;
17-Jan-2024	Upasana Nayak	2.20	Record and prepare receipt voucher for wire received from sale of asset. Emails with Bell to request account cancellation and inquire about balance due. Save documents received from Bell in folder. Call with Reliance to received invoices and inform them of the sale of property. Prepare payment and requisitions for Bell and Reliance. Lengthy call and email with Bell to request updating the mailing address to get the return kit for the TV receiver.
17-Jan-2024	Akhil Kapoor	.20	Discussion regarding Bell account, last few invoices (higher than usual) and return of their equipment. Also, discussed cancellation of insurance and a form to be filled
18-Jan-2024	Jerry Henechowicz	1.10	Preparation of interim R&D, emails with Minden Gross re fees, and drafting of responding email to Gowlings/CIBC on cash position and potential funds available
18-Jan-2024	Chahna Nathwani	.10	Brief email fwd to Bell regarding Equipment's
19-Jan-2024	Jerry Henechowicz	.20	Sending email update of cash position and fees to Gowlings
22-Jan-2024	Akhil Kapoor	.40	Discussion with FCA and Matt, filling out the Insurance cancellation form and submitting them to FCA
23-Jan-2024	Upasana Nayak	.10	Follow up regarding email sent to Bell for returning equipment.
23-Jan-2024	Akhil Kapoor	.20	Discussion with FCA insurance regarding cancellation of insurance and about unpaid invoice of \$4k for Dec 2023- June 2024 and enquiring with Matt about it
23-Jan-2024	Chahna Nathwani	.60	reviewed and reconciled the invoices with past payments, prepared chq reqs for Enbridge and water bill, fwd to Matthew for approval
26-Jan-2024	Matthew Lem	.20	Review file re Minden Gross accounts to be paid; forward same to C. Nathwani for processing.
26-Jan-2024	Upasana Nayak	.20	Provide account details to Bell and follow up about obtaining the TV receiver return kit.
29-Jan-2024	Akhil Kapoor	.40	1) Review and pick up of Kazembe assets , understanding and segregating Bell assets and discussion with M. Lem and Upasana
30-Jan-2024	Chahna Nathwani	.40	Reviewed court order and invoices, prepared chq req for legal fee payment, fwd to Matthew for signing
30-Jan-2024	Chahna Nathwani	.30	Prepared chq req for MNP Fee, fwd to Jerry and Matthew for approval, printed chq and gave it to accounting team
02-Feb-2024	Yujun liu	.70	prepare for cheque requisition for utility service, and record it in ascend

MNP LTD.

COURT APPOINTED RECEIVER OF KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION AND
1340182 ONTARIO LIMITED

FOR THE PERIOD NOVEMBER 1, 2023 TO FEBRUARY 29, 2024

DATE	PROFESSIONAL	HOURS	DESCRIPTION
05-Feb-2024	Akhil Kapoor	.20	Discussion with Matt re insurance expenses for the policy prior to its cancellation, last invoice received from FCA
06-Feb-2024	Akhil Kapoor	.30	1) Discussion with Matt regarding resolving the matter with insurance, Reviewing the insurance FCA
08-Feb-2024	Akhil Kapoor	.10	Discussion regarding resolving the insurance matter and sharing the final invoice for payment
09-Feb-2024	Upasana Nayak	.50	Email correspondence with FCA insurance confirming receipt of payment.
09-Feb-2024	Akhil Kapoor	.10	1) Discussion with Upasana re o/s invoice for insurance and confirming that it was already paid, to communicate and confirm with Adriana from FCA
22-Feb-2024	Jerry Henechowicz	.10	Update email and call with Thomas Gertner on next steps
27-Feb-2024	Jerry Henechowicz	.20	Review of multiple emails related to schedule for distribution motion
29-Feb-2024	Lisa Visconti	.10	BANK REC

56.60

BILLING SUMMARY			
PROFESSIONAL	HOURS	HOURLY RATE	AMOUNT
Akhil Kapoor	4.60	450.00	2,070.00
Chahna Nathwani	3.40	250.00	850.00
Jerry Henechowicz	17.60	695.00	12,232.00
Lisa Visconti	0.40	250.00	100.00
Matthew Lem	12.20	695.00	8,479.00
Upasana Nayak	12.00	250.00	3,000.00
yujun liu	6.40	275.00	1,760.00
Total	56.60		28,491.00

APPENDIX J

Court File No. CV-23-00698539-00CL

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

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

**1340182 ONTARIO LIMITED and KAZEMBE & ASSOCIATES
PROFESSIONAL CORPORATION**

Respondents

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

**AFFIDAVIT OF TIMOTHY R. DUNN
(Sworn March 28, 2024)**

I, TIMOTHY R. DUNN, of the Town of Erin, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a lawyer with the law firm Blaney McMurtry LLP (“**Blaney**”) and was a lawyer with the law firm Minden Gross LLP (“**Minden Gross**”), counsel for MNP Ltd., in its capacity as receiver (in such capacity, the “**Receiver**”), of certain assets, undertakings and properties of Kazembe & Associates Professional Corporation and 1340182 Ontario Limited. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. Where my evidence is based upon information and belief, I have stated the source of my information and believe it to be true.
2. Attached hereto as **Exhibit “A”** are true copies of each account issued by Minden Gross for the period commencing November 1, 2023 through to January 24, 2024, with respect to the fees and disbursements incurred by Minden Gross.

This is Exhibit "A" referred to in the Affidavit of Timothy R. Dunn, sworn by
Timothy R. Dunn of the Town of Erin, in the Province of Ontario, before
me at the City of Toronto, in the Province of Ontario, on
March 28, 2024



A Commissioner for Taking Affidavits

MINDEN GROSS LLP

MINDEN GROSS LLP
BARRISTERS & SOLICITORS
 145 KING STREET WEST, SUITE 2200
 TORONTO, ON, CANADA M5H 4G2
 TEL 416.362.3711 FAX 416.864.9223
 WWW.MINDENGROSS.COM

IN ACCOUNT WITH

DATE 27-Dec-2023
 INVOICE NUMBER 3029549
 GST/HST REG. # 11943 7556 RT
 FILE NUMBER 4132773

PERSONAL AND CONFIDENTIAL

MNP Ltd.
 1 Adelaide Street East
 Suite 1900
 Toronto, ON M5C 2V9
 Attention: Matthew Lem

RE: Receivership of 1340182 Ontario Limited, et al.

For professional services:

		Currency: CAD
Our Fees		22,762.50
GST/HST:		2,959.13
Total Fees and GST/HST:		<u>25,721.63</u>
Disbursements	772.44	
GST/HST on taxable disbursements:	51.49	
Total disbursements and GST/HST:	<u>823.93</u>	823.93
Total Due This Invoice		\$26,545.56
Previous Balance Due		21,436.91
Total Amount Due		<u><u>\$47,982.47</u></u>

MINDEN GROSS ^{LLP}

Invoice Date: 27-Dec-2023
 Invoice Number: 3029549
 Matter Number: 4132773

Time Detail

<u>Date</u>	<u>Name</u>	<u>Description</u>
11/01/2023	Fox, Karen A.	Receive instructions, pulling registered charge and provide to V. Hurley;
11/01/2023	Dunn, Timothy	Review real property search and prepare security opinion re 923 Ontario charge;
11/06/2023	Dunn, Timothy	Correspondence re motion materials; discussion with counsel for 1st mortgage re security; discussion with J. Henechowitz; finalize security opinion and correspondence with receiver re same;
11/07/2023	Dunn, Timothy	Meeting with S. Nassabi re background to priority dispute; correspondence with counsel for CIBC and telephone call to counsel for Arthur Bryan (3rd mortgagee);
11/07/2023	Kamyabi-Nassabi, Sepideh	Discussion with T. Dunn
11/08/2023	Dunn, Timothy	Correspondence with counsel for CIBC re scope of approval motion; follow up with counsel for 3rd mortgagee re position on motion; consider draft report of receiver re sale approval and correspondence re same; discussion with receiver re report and revise report; correspondence with counsel for CIBC re debt figures; discussion with M. Lem re debt statement for 1st mortgagee; correspondence with receiver re report; consider revisions to report by trustee;
11/08/2023	Kamyabi-Nassabi, Sepideh	Correspondence to T. Dunn ; review draft report; prepare notice of motion; exchange of internal correspondence
11/09/2023	Dunn, Timothy	Prepare Fee Affidavit; correspondence with receiver; meeting with receiver and S. Nassabi re court materials; consider revisions to report and various correspondence re outstanding information; discussion with receiver re report; correspondence with receiver; correspondence with counsel for 1st mortgagee re mortgage statement;
11/09/2023	Kamyabi-Nassabi, Sepideh	Internal discussion; commission fee affidavit; Teams call with clients; review and revise draft report; internal correspondence; correspondence with clients; draft orders (x2); revise notice of motion; review client's revisions to draft report
11/10/2023	Kamyabi-Nassabi, Sepideh	Correspondence to Gowlings; discussion with Gowlings; exchange of several correspondence with client; exchange of several internal correspondence; internal discussions; review and revise court materials; letter to service list
11/10/2023	Dunn, Timothy	Correspondence with counsel for 1st mortgagee; various correspondence; revise Report and motion materials and consider outstanding appendices; revise court materials;
11/13/2023	Kamyabi-Nassabi, Sepideh	Internal correspondence; correspondence with Gowlings; prepare factum
11/13/2023	Dunn, Timothy	Correspondence re CIBC debt statement; correspondence with counsel for CIBC re debt statement;
11/14/2023	Pearlstein, Steven	email from and to Sepideh; review PIN and amend draft Order;
11/14/2023	Kamyabi-Nassabi, Sepideh	Draft factum; exchange correspondence with client; internal correspondence; review correspondence to purchaser's counsel
11/14/2023	Kamyabi-Nassabi, Sepideh	Review revisions to Approval and Vesting Order
11/14/2023	Dunn, Timothy	Correspondence re Supplemental Report to deal with debt figures; consider Factum;

MINDEN GROSS ^{LLP}

Invoice Date: 27-Dec-2023
 Invoice Number: 3029549
 Matter Number: 4132773

<u>Date</u>	<u>Name</u>	<u>Description</u>
11/15/2023	Kamyabi-Nassabi, Sepideh	Finalize factum; letters to service list; commission affidavit of service
11/16/2023	Kamyabi-Nassabi, Sepideh	Prepare confidential appendices for court filing; correspondence to court; internal correspondence; correspondence re Foglers; review and revise draft supplementary report; discussion with T. Dunn; correspondence to client; letter to service list
11/16/2023	Dunn, Timothy	Consider Factum; various correspondence re sale approval motion; consider Supplemental Report;
11/17/2023	Kamyabi-Nassabi, Sepideh	Review correspondence from purchaser counsel; revise draft Approval and Vesting Order; correspondence to purchaser counsel
11/17/2023	Dunn, Timothy	Correspondence re AVO; consider Responding Motion Record from counsel for Bryan;
11/19/2023	Dunn, Timothy	Correspondence with counsel for Bryan; various correspondence with counsel for A. Bryan and each of the receiver and counsel for the other mortgagees; correspondence with M. Kaplan and counsel for A. Bryan; correspondence with counsel for A. Bryan re Supplemental Report; correspondence with counsel for 1st mortgagee;
11/20/2023	Kamyabi-Nassabi, Sepideh	Review responding record of Arthur Bryan; review exchange of correspondence
11/20/2023	Dunn, Timothy	Correspondence and discussion with counsel for 1st mortgagee; discussion with S. Nassabi; follow up correspondence with D. Seed, counsel for A. Bryan re position on payment to 1st mortgagee; correspondence re AVO; various correspondence re position of A. Bryan; correspondence with receiver and counsel for mortgagee; correspondence with counsel for 1st mortgagee;
11/21/2023	Dunn, Timothy	Correspondence re need for additional court date to deal with priority issues;
11/21/2023	Kamyabi-Nassabi, Sepideh	Review exchange of correspondence; internal correspondence; prepare for motion; exchange of correspondence with court; correspondence to counsel for purchaser; correspondence with counsel for CIBC; review materials
11/22/2023	Dunn, Timothy	Correspondence with counsel for CIBC re schedule needed for priority issue;
11/22/2023	Kamyabi-Nassabi, Sepideh	Prepare for motion; attend motion; revise draft orders for court; report to client; correspondence from court; correspondence to counsel for purchaser
12/08/2023	Dunn, Timothy	Prepare letter to C. Kazembe re asset removal; correspondence with M. Lem re same; correspondence from purchaser re request for extension of closing to January 15, 2024; various correspondence re APS and closing issues; correspondence with receiver re closing date;
12/11/2023	Senderowitz, Marc	Review email from T. Dunn and attachments including vesting order and agreement of purchase and sale for the property; meeting with assistant to review the searches to be conducted against the property including title search, tax certificate and building, zoning and work order search in preparation of the sale of the property in January; review of file materials including factum supporting request for court approval for the sale of the property; review list of mortgages in the vesting order to be deleted from the property register on closing and advise T. Dunn that the registration date for one of the mortgages is inaccurate;
12/11/2023	Dunn, Timothy	Consider title issue;

MINDEN GROSS ^{LLP}

Invoice Date: 27-Dec-2023
 Invoice Number: 3029549
 Matter Number: 4132773

<u>Date</u>	<u>Name</u>	<u>Description</u>
12/12/2023	Senderowitz, Marc	Review of email from T. Dunn and prepare responding email regarding the possible requirement to amend the vesting order due to a minor error in the registration date of one of the charges on title to be deleted after closing;
12/12/2023	Dunn, Timothy	Various correspondence re sale; correspondence with receiver re bank prepared to extend but want \$5400 to cover holding costs for delay; correspondence with counsel for purchaser re same; correspondence with counsel for purchaser;
12/13/2023	Dunn, Timothy	Various correspondence re extension of sale closing; discussion with receiver re closing extension issues;
12/14/2023	Senderowitz, Marc	Review of APS, commission statement and other documents received from the agent; review of tax certificate confirming arrears of approximately \$19,000.00 against the property and forward tax certificate to T. Dunn for his information;
12/14/2023	Dunn, Timothy	Correspondence with real estate agent re sale issues; discussion with M. Kaplan re interest costs for January; telephone call from counsel for Gelda re purchase of 1/2 interest in designated equipment; telephone call to S. Dowds;
12/15/2023	Dunn, Timothy	Correspondence re tax arrears; exchange calls with S. Dowds at counsel for purchaser's office;
12/18/2023	Senderowitz, Marc	Review of email from T. Dunn confirming closing date of January 15, 2024 and prepare responding email;
12/18/2023	Dunn, Timothy	Discussion with S. Dowds re adjournment issues; discussion with counsel for purchaser and correspondence re mid-January closing date;
12/19/2023	Senderowitz, Marc	Review of file materials to determine what items will be required for closing and to confirm the requirement of obtaining an updated statement of the outstanding realty taxes as of January 1, 2024 from the City of Toronto;

Timekeeper Summary

<u>Name</u>	<u>Timekeeper Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Dunn, Timothy	Partner	13.50	750.00	10,125.00
Fox, Karen A.	Clerk	0.10	275.00	27.50
Kamyabi-Nassabi, Sepideh	Partner	19.00	525.00	9,975.00
Pearlstein, Steven	Partner	1.00	750.00	750.00
Senderowitz, Marc	Partner	2.90	650.00	1,885.00
Total		36.50		\$22,762.50

Cost Summary

<u>Description</u>	<u>Amount</u>
Agent Service/Filing/Reg Fees - Non Taxable	37.35
Agent Service/Filing/Registration Fees/Reports	26.60
Agent Service/Filing/Registration Fees/Reports	65.00
Black Binders/Binding	33.10
File Notice of Motion - Non Taxable	339.00
Photocopy/Document Impression	186.75
Postage Charges/Registered Mail	47.26

**MINDEN
GROSS** LLP

Invoice Date: 27-Dec-2023
Invoice Number: 3029549
Matter Number: 4132773

<u>Description</u>	<u>Amount</u>
Subsearch Disbursements	37.38
Total	\$772.44

MINDEN GROSS LLP

MINDEN GROSS LLP
BARRISTERS & SOLICITORS
 145 KING STREET WEST, SUITE 2200
 TORONTO, ON, CANADA M5H 4G2
 TEL 416.362.3711 FAX 416.864.9223
 WWW.MINDENGROSS.COM

MNP Ltd.
 1 Adelaide Street East
 Suite 1900
 Toronto, ON M5C 2V9
 Attention: Matthew Lem

IN ACCOUNT WITH
 DATE 27-Dec-2023
 INVOICE NUMBER 3029549
 GST/HST REG. # 11943 7556 RT
 FILE NUMBER 4132773

REMITTANCE COPY

Receivership of 1340182 Ontario Limited, et al.

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Balance Due</u>
Prior Balance Due		\$21,436.91
<u>Current Invoice</u>		
12/27/2023	3029549	\$26,545.56
Balance Due		<u><u>\$47,982.47</u></u>

REMITTANCE ADVICE

<u>Canadian Dollar Wire Payments:</u>	<u>Canadian Dollar EFT Payments:</u>	<u>Cheque Payments:</u>
Royal Bank of Canada 200 Bay Street Toronto, Ontario, M5J 2J2 Bank No: 003 Transit No: 06012 Account No: 060121022276 SWIFT Code: ROYCCAT2 Beneficiary: Minden Gross LLP	Royal Bank of Canada 200 Bay Street Toronto, Ontario, M5J 2J2 Bank No: 003 Transit No: 06012 Account No: 1022276 Beneficiary: Minden Gross LLP	Minden Gross LLP Barristers & Solicitors ACCOUNTS RECEIVABLE 145 King Street West, Suite 2200 Toronto, ON, Canada, M5H 4G2 <i>Please return remittance advice(s) with cheque</i>
<i>Please email Wire/EFT payment details to payments@mindengross.com referencing invoice number(s) being paid</i>		
Interac E-transfer Payments: Using Online Banking App or Website Payee Name: Minden Gross LLP Email: payments@mindengross.com <i>Please include the invoice number(s) in the e-transfer notes</i>		
<i>For inquiries or copy of invoices, please contact: Payments (416) 369-4328 / E-mail: payments@mindengross.com</i>		

MINDEN GROSS LLP

MINDEN GROSS LLP
BARRISTERS & SOLICITORS
 145 KING STREET WEST, SUITE 2200
 TORONTO, ON, CANADA M5H 4G2
 TEL 416.362.3711 FAX 416.864.9223
 WWW.MINDENGROSS.COM

IN ACCOUNT WITH

DATE 24-Jan-2024
 INVOICE NUMBER 3031012
 GST/HST REG. # 11943 7556 RT
 FILE NUMBER 4132773

PERSONAL AND CONFIDENTIAL

MNP Ltd.
 1 Adelaide Street East
 Suite 1900
 Toronto, ON M5C 2V9
 Attention: Matthew Lem

RE: Receivership of 1340182 Ontario Limited, et al.

For professional services:

		Currency: CAD
Our Fees		7,840.00
GST/HST:		1,019.20
Total Fees and GST/HST:		<hr/> 8,859.20
Disbursements	355.25	
GST/HST on taxable disbursements:	10.43	
Total disbursements and GST/HST:	<hr/> 365.68	365.68
Total Due This Invoice		<hr/> \$9,224.88
Previous Balance Due		47,982.47
Total Amount Due		<hr/> \$57,207.35 <hr/>

MINDEN GROSS ^{LLP}

Invoice Date: 24-Jan-2024
 Invoice Number: 3031012
 Matter Number: 4132773

Time Detail

<u>Date</u>	<u>Name</u>	<u>Description</u>
12/21/2023	Dunn, Timothy	Correspondence re closing date extension;
12/22/2023	Senderowitz, Marc	Review of City of Toronto Building Dept. report and prepare email to T. Dunn with copy of the report for his records;
12/22/2023	Dunn, Timothy	Telephone call from M. Lem;
01/02/2024	Senderowitz, Marc	Review of requisition letter from purchaser's solicitor; review of APS to confirm HST should be charged on the sale price; review of emails confirming that the \$5,400.00 purchaser's fee will be paid directly to our firm and not included as an adjustment on closing; review of precedent materials to confirm the form of closing documents, statement of adjustments and the form of Teraview application to be registered on closing; review of parcel abstract for the property; preliminary preparation of response to the purchaser's requisition letter;
01/03/2024	Dunn, Timothy	Correspondence re deposit issues;
01/03/2024	Senderowitz, Marc	Prepare response to purchaser's requisition letter; review City of Toronto tax certificate, review vesting order and the purchase agreement; prepare email to T. Dunn requesting confirmation that the deposit has been paid to the receiver;
01/04/2024	Senderowitz, Marc	Prepare email to T. Dunn requesting clarification regarding the receipt of the 100K deposit and the preparation of the Receiver's Certificate; prepare email to Matt requesting he contact me to discuss the logistics of closing the transaction; review of emails from the purchaser's counsel regarding the payment of the \$5,400.00 extension fee; prepare email responding to purchaser's counsel inquiry with respect to outstanding PPSA registrations against the registered owner;
01/05/2024	Senderowitz, Marc	Telephone call with Matt Lem to discuss closing arrangements including providing the Receiver's Certificate prior to closing so it will be available to be registered with the vesting order; review draft adjustments and statement of funds documents; prepare email to T. Dunn requesting confirmation that we do not have to hold back our estimated fees and disbursements after closing; prepare email to M. Lem with draft adjustments and statement of funds for his review;
01/08/2024	Senderowitz, Marc	Review emails from receiver; prepare responding email to receiver and confirm who has possession of the keys to the building; review client comments to SOA and statement of funds; prepare email to client advising that the \$5,400.00 extension fee has been paid so there is no requirement to adjust for this item and that the one penny error in the commission statement is inconsequential and not worth requesting a corrected statement; review revised SOA and statement of funds document sent out to client;
01/09/2024	Senderowitz, Marc	Prepare draft application to register vesting order prior to sending it to the purchaser's solicitor for review; review of precedent materials and title abstract for the property to confirm mortgages to be discharged after registration by the Land Registrar pursuant to the vesting order;
01/10/2024	Senderowitz, Marc	Review email from Purchaser's counsel asking if the usual HST declaration and indemnity form can apply to this transaction; prepare responding email quoting Section 22 of the APS requiring that HST be collected on closing; prepare supplementary email to purchaser confirming that the three mortgages on title will be deleted by the Land Registrar pursuant to the terms of the vesting order so we will not be providing our firm undertaking to do so

MINDEN GROSS ^{LLP}

Invoice Date: 24-Jan-2024
 Invoice Number: 3031012
 Matter Number: 4132773

<u>Date</u>	<u>Name</u>	<u>Description</u>
01/11/2024	Senderowitz, Marc	Review of email from Purchaser's solicitor requesting changes to the Application; review application in accordance with request from Purchaser's counsel;
01/12/2024	Senderowitz, Marc	Review of emails from purchaser's counsel regarding the tax arrears and changes to the draft application for the vesting order; prepare email to purchaser confirming that our tax certificate includes interest on the arrears to Jan. 31st, 2024 and that the arrears will be paid the day after closing to the City and confirmation will be provided to the purchaser;
01/15/2024	Senderowitz, Marc	Prepare for closing; amend application for vesting order in accordance with purchaser's request; review emails from purchaser's counsel; complete application and notify purchaser's lawyer that the "Capacity" field has to be completed for the purchaser prior to release for registration; review closing documents provided by purchaser and request a copy of the purchaser's Bring Down certificate as required by the APS; sign and release application; review of follow up emails from purchaser's counsel;
01/17/2024	Senderowitz, Marc	Review of post closing emails; discuss preparation of reporting letter with assistant;
01/20/2024	Senderowitz, Marc	Review and amend final reporting letter to client;

Timekeeper Summary

<u>Name</u>	<u>Timekeeper Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Dunn, Timothy	Partner	0.40	750.00	300.00
Senderowitz, Marc	Partner	11.60	650.00	7,540.00
Total		12.00		\$7,840.00

Cost Summary

<u>Description</u>	<u>Amount</u>
Bank Charges	30.00
Certificate - Compliance	198.59
Certificate - Realty Tax	76.43
Deliveries	16.98
Land Transfer Tax - Non Taxable	55,550.00
MLTT Admin Fee	0.00
Photocopy/Document Impression	33.25
Register Charge - Non Taxable	(55,633.11)
Register Document General - Non Taxable	83.11
Total	\$355.25

MINDEN GROSS LLP

MINDEN GROSS LLP
BARRISTERS & SOLICITORS
 145 KING STREET WEST, SUITE 2200
 TORONTO, ON, CANADA M5H 4G2
 TEL 416.362.3711 FAX 416.864.9223
 WWW.MINDENGROSS.COM

MNP Ltd.
 1 Adelaide Street East
 Suite 1900
 Toronto, ON M5C 2V9
 Attention: Matthew Lem

IN ACCOUNT WITH
 DATE 24-Jan-2024
 INVOICE NUMBER 3031012
 GST/HST REG. # 11943 7556 RT
 FILE NUMBER 4132773

REMITTANCE COPY

Receivership of 1340182 Ontario Limited, et al.

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Balance Due</u>
Prior Balance Due		\$47,982.47
<u>Current Invoice</u>		
01/24/2024	3031012	\$9,224.88
Balance Due		<u><u>\$57,207.35</u></u>

REMITTANCE ADVICE

<u>Canadian Dollar Wire Payments:</u>	<u>Canadian Dollar EFT Payments:</u>	<u>Cheque Payments:</u>
Royal Bank of Canada 200 Bay Street Toronto, Ontario, M5J 2J2 Bank No: 003 Transit No: 06012 Account No: 060121022276 SWIFT Code: ROYCCAT2 Beneficiary: Minden Gross LLP	Royal Bank of Canada 200 Bay Street Toronto, Ontario, M5J 2J2 Bank No: 003 Transit No: 06012 Account No: 1022276 Beneficiary: Minden Gross LLP	Minden Gross LLP Barristers & Solicitors ACCOUNTS RECEIVABLE 145 King Street West, Suite 2200 Toronto, ON, Canada, M5H 4G2 <i>Please return remittance advice(s) with cheque</i>
<i>Please email Wire/EFT payment details to payments@mindengross.com referencing invoice number(s) being paid</i>		
Interac E-transfer Payments: Using Online Banking App or Website		
Payee Name: Minden Gross LLP Email: payments@mindengross.com		
<i>Please include the invoice number(s) in the e-transfer notes</i>		
<i>For inquiries or copy of invoices, please contact: Payments (416) 369-4328 / E-mail: payments@mindengross.com</i>		

This is Exhibit "B" referred to in the Affidavit of Timothy R. Dunn, sworn by
Timothy R. Dunn of the Town of Erin, in the Province of Ontario, before
me at the City of Toronto, in the Province of Ontario, on
March 28, 2024



A Commissioner for Taking Affidavits

**RE: Receivership of 1340182 Ontario Limited and
Kazembe & Associates Professional Corporation**

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended February 28, 2024 as more particularly described below.

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
February 5, 2024	TDunn	0.40	Correspondence with M. Kaplan re distribution motion; correspondence with counsel for CIBC re issues with subordinated mortgagee and distribution motion; correspondence with 3rd mortgagee re need to press forward with motion to distribute;
February 8, 2024	TDunn	0.20	Correspondence with M. Kaplan re outstanding issues and T. Gertner re next steps with distribution motion;
February 14, 2024	TDunn	0.10	Follow-up with T. Gertner re status of distribution motion;
February 14, 2024	TDunn	0.10	Consider next steps;
February 16, 2024	TDunn	0.20	Correspondence with counsel for CIBC re require case conference to address potential opposition by 3rd mortgagee to proposed distribution;
February 20, 2024	TDunn	0.30	Correspondence with counsel for CIBC re issues raised by 3rd mortgagee re distribution motion and allegation of fraud;
February 20, 2024	TDunn	0.20	Consider forensic report re alleged fraudulent signatures;

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
February 20, 2024	TDunn	0.10	Correspondence with D. Seed re confirmation of Blaney continuing to act for receiver;
February 20, 2024	TDunn	0.20	Meet with M. Lem re next steps with distribution motion and concerns raised by 3rd mortgagee re fraudulent signatures;
February 20, 2024	TDunn	0.10	Correspondence with M. Lem re forensic report;
February 20, 2024	TDunn	0.10	Correspondence with counsel for CIBC re case conference to deal with fraud allegations raised by counsel for 3rd mortgagee;
February 20, 2024	JK	0.10	Conducted Corporate searches on MNP Ltd.
February 21, 2024	TDunn	0.20	Correspondence with counsel for CIBC re case conference;
February 21, 2024	TDunn	0.20	Correspondence with counsel for CIBC and court re case conference to consider schedule for determination of priority issues;
February 26, 2024	TDunn	0.30	Correspondence with counsel for CIBC and consider Aide Memoire;
February 27, 2024	TDunn	0.90	Correspondence with counsel for CIBC; prepare for and attend case conference re issues associated with claim of fraud by counsel for third mortgagee and discussion with counsel for CIBC re timetable for distribution motion delivery of materials;
February 27, 2024	TDunn	0.10	Correspondence with M. Lem re summary of case conference and new timetable for material delivery in connection with the distribution motion;
February 27, 2024	TDunn	0.20	Consider endorsement of Conway J. and correspondence with M. Lem re same;

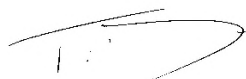
OUR FEE HEREIN:
FEE HST:

\$3,344.00
\$434.72

<u>Lawyer</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Timothy R. Dunn	Partner	3.90	\$850.00	\$3,315.00
John Kroupis	Clerk	0.10	\$290.00	\$29.00

<u>Disbursements</u>	<u>Amount</u>
Filing Fees* - Non-Taxable	\$8.00
Cyberbahn Agent Service Fee	\$14.40
TOTAL DISBURSEMENTS:	\$22.40
*HST is not charged	
DISBURSEMENT HST:	<u>\$1.87</u>
TOTAL FEES AND DISBURSEMENTS:	\$3,366.40
TOTAL HST:	<u>\$436.59</u>
TOTAL AMOUNT DUE:	<u>\$3,802.99</u>

BLANEY McMURTRY LLP



Timothy R. Dunn
E. & O.E

Fees may include charges for services provided by Lawco Limited.
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CANADIAN IMPERIAL BANK OF COMMERCE and

Applicant

Respondents

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

Proceeding commenced at **Toronto**

**AFFIDAVIT OF TIMOTHY R. DUNN
(Sworn March 28, 2024)**

BLANEY MCMURTRY LLP

Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

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Lawyers for Court-appointed Receiver,
MNP Ltd.

APPENDIX K



STATEMENT BY
Gowling WLG (Canada) LLP

RE: Indebtedness owed by 1340182 Ontario Limited (the "**Borrower**") to Canadian Imperial Bank of Commerce (the "**Bank**")
File No. H233430

According to the Bank's records, the Borrower is indebted or otherwise liable to the Bank for the following amount as of March 20, 2024:

Business Term Loan (#322/4864050)	
Principal outstanding	\$894,721.98
Accrued interest	\$93,744.26
Interest accrues at the Bank's prime rate of interest	
Legal fees, disbursements and taxes invoiced to March 20, 2024	\$97,035.95
Total Indebtedness as at March 20, 2024	\$1,085,502.19

GOWLING WLG (CANADA) LLP

Domagoj (Dom) Glavota
Gowling WLG (Canada) LLP
Counsel to and agent for
Canadian Imperial Bank of Commerce

I have authority to bind the bank.

H233430\61519846\2

Court File No. CV-23-00698539-00CL
1340182 ONTARIO LIMITED et al

CANADIAN IMPERIAL BANK OF COMMERCE and

Applicant

Respondents

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

Proceeding commenced at **Toronto**

**SECOND REPORT OF MNP LTD. AS RECEIVER OF
THE ASSETS, UNDERTAKINGS AND PROPERTIES
OF THE RESPONDENTS**

BLANEY MCMURTRY LLP

Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

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Lawyers for Court-appointed Receiver,
MNP Ltd.

TAB 3

Court File No. CV-23-00698539-00CL

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

THE HONOURABLE)	MONDAY, THE 8 TH
)	
JUSTICE)	DAY OF APRIL, 2024

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

**1340182 ONTARIO LIMITED and KAZEMBE & ASSOCIATES
PROFESSIONAL CORPORATION**

Respondents

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

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by MNP Ltd. (“MNP”) in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of the undertaking, property and assets of Kazembe & Associates Professional Corporation and 1340182 Ontario Limited for an order, *inter alia*, approving the Receiver’s conduct and fees and authorizing the Receiver to make distributions was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Receiver, dated March 28, 2024 and the appendices thereto (the “**Second Report**”), including the Affidavit of Jerry Henechowicz, sworn March 27, 2024 (the “**Henechowicz Affidavit**”) and the Affidavit of Timothy R. Dunn, sworn March 28, 2024 (the “**Blaney Fee Affidavit**”), the Affidavit of Arthur Bryan (“**Bryan**”), sworn

March 7, 2024, and the exhibits thereto, the Responding Motion Record of 923944 Ontario Ltd. (“**923 Ontario**”), and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for Bryan, counsel for 923 Ontario, and such other counsel as were present and appearing on the Counsel Slip, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of ●, sworn ●, filed:

SERVICE

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

APPROVAL OF FEES AND ACTIVITIES

2. **THIS COURT ORDERS** that the Second Report and the activities of the Receiver and its counsel, Minden Gross LLP (“**Minden Gross**”) and Blaney McMurtry LLP (“**Blaney**”), as set out therein are hereby approved, provided, however, that only the Receiver in its personal capacity and only with respect to its own personal liabilities shall be entitled to rely upon or utilize in any way such approval as it relates to the Receiver.

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, Minden Gross and Blaney, as set out in the Second Report, the Henechowicz Affidavit and the Blaney Fee Affidavit are hereby approved.

4. **THIS COURT ORDERS** that the interim statement of receipts and disbursements for the period ending March 27, 2024, and appended as Appendix H to the Second Report, is hereby approved.

RECEIVER AUTHORIZED TO MAKE DISTRIBUTIONS

5. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make distributions (collectively, the “**Distributions**”) in accordance with the Order of this Honourable Court, dated April 8, 2024 (or such other Order of the Court) determining the priority dispute as between Bryan, 923 Ontario, and the Canadian Imperial Bank of Commerce, subject to the Holdback (as defined at paragraph 33 of the Second Report) and paragraph 6 below.

6. **THIS COURT ORDERS** that the Distributions shall not constitute a “distribution” for the purposes of section 107 of the *Corporations Tax Act (Ontario)*, section 22 of the *Retail Sales Tax Act (Ontario)*, section 117 of the *Taxation Act, 2007 (Ontario)*, section 159 of the *Income Tax Act*, section 270 of the *Excise Tax Act (Canada)*, section 86 of the *Employment Insurance Act (Canada)*, or any other similar applicable federal, provincial or territorial tax legislation (collectively, the “**Tax Statutes**”), the Receiver is hereby empowered to, after sixty days of this Order, make the Distributions without a tax clearance certificate or comfort letter from the Canada Revenue Agency (“**Tax Clearance Certificate**”). The Receiver shall not be liable in its personal or corporate capacity for making a distribution prior to receiving a Tax Clearance Certificate and the Receiver, in making the Distributions, is merely a disbursing agent and is not exercising any discretion in making the Distributions, and no person is “distributing” such funds for the purpose of the Tax Statutes, and the Receiver shall not incur any liability under the Tax Statutes in respect of the Distributions and the Receiver is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect or as a result of the Distributions made by it in accordance with this Order and any claims of this nature are hereby forever barred.

DISCHARGE OF RECEIVER

7. **THIS COURT ORDERS** that, effective upon the filing of the Receiver of a certificate (the “**Discharge Certificate**”) in the form attached hereto as Schedule “A”, confirming the completion of the terms and conditions of its discharge have been met, as set out in the Second Report, the Receiver shall be discharged as receiver of all property, assets and undertakings of the Company, provided, however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stay of proceedings in favour of MNP in its capacity as Receiver.

8. **THIS COURT ORDERS AND DECLARES** that MNP is hereby released and discharged from any and all liability that MNP now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of MNP while acting in its capacity as Receiver herein, save

and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, MNP is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

GENERAL

9. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.

10. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction to give effect to this Order and to assist the Debtors, the Receiver and their respective 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 the Debtors, and the Receiver, as an officer of this Court, as may be necessary or desirable to recognize and give effect to this Order and to assist the Debtors, the Receiver and their respective agents in carrying out the terms of this Order.

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-23-00698539-00CL

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

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

**1340182 ONTARIO LIMITED and KAZEMBE & ASSOCIATES
PROFESSIONAL CORPORATION**

Respondents

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

RECEIVER’S DISCHARGE CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Osborne of the Ontario Superior Court of Justice (the “**Court**”) dated May 11, 2023, MNP Ltd. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Kazembe & Associates Professional Corporation.

B. Pursuant to an Order of the Honourable Madam Justice Steele of the Court dated June 22, 2023, the Receiver was appointed as the receiver of the undertaking, property and assets of 1340182 Ontario Limited.

C. Pursuant to an Order of the Court dated April 8, 2024, the Court approved the discharge of the Receiver to become effective upon the filing by the Receiver of a certificate certifying that all outstanding matters in respect of the receivership proceeding have been completed.

THE RECEIVER CERTIFIES the following:

1. All outstanding matters in respect of the receivership proceeding, including but not limited to those set out in the Second Report of the Receiver, dated March 28, 2024, have been completed; and
2. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**MNP LTD., in its capacity as the
Court-appointed Receiver of
Kazembe & Associates
Professional Corporation and
1340182 Ontario Limited**

Per: _____
Name: Jerry Henechowicz
Title: Senior Vice President

CANADIAN IMPERIAL BANK OF COMMERCE and

Court File No. CV-23-00698539-00CL
1340182 ONTARIO LIMITED et al

Applicant

Respondents

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

Proceeding commenced at **Toronto**

DISTRIBUTION AND DISCHARGE ORDER

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MNP Ltd.

CANADIAN IMPERIAL BANK OF COMMERCE and

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MOTION RECORD OF THE RECEIVER

BLANEY MCMURTRY LLP

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