

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

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

March 28, 2024

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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