

COURT FILE NUMBER	2303 22127
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF	BANK OF MONTREAL
DEFENDANTS	2093924 ONTARIO INC., HYEONG SIK KIM AND HEE SEON KIM
DOCUMENT	FIRST REPORT TO THE COURT OF MNP LTD. IN ITS CAPACITY AS RECEIVER OF 2093624 ALBERTA LTD. DATED JUNE 17, 2024
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Miller Thomson LLP 2700 Commerce Place 10155 – 102 Street Edmonton, AB T5J 4G8 Attention: Susy Trace Telephone: (780) 429-9713 Email: strace@millerthomson.com Solicitors for the Receiver, MNP Ltd.

LIST OF SCHEDULES

Schedule "A" - Copy of an Alberta Trade Name/Partnership Search of the Wash Factory

Schedule "B" - Notice and Statement of Receiver

Schedule "C" - Trademarks & Patent License Agreement dated as of March 20, 2017 and executed April 10, 2017

Schedule "D" - Copies of the registered Trademarks and Patent obtained from the Canadian Intellectual Property Office

Schedule "E" - Copy of an Alberta Corporate Search for Slaz Investments Ltd.

Schedule "F" - Copy of an Alberta Corporate Search for 1643434 Alberta Ltd.

Schedule "G" - Copy of an Alberta Corporate Search for Blouroy Summit Investments Corp.

Schedule "H" - Copy of an Alberta Trade Name/Partnership Search for "ROCK-N-WASH"

Schedule "I" – A copy of the 2017 Purchase Agreement (as hereinafter defined)

Schedule "J" – A copy of a Certificate of Title for PLAN 0720455; BLOCK 21; LOT 2

Schedule "K" – A copy of a Canadian Patent Application regarding the Patent obtained from the Canadian Intellectual Property Office

Schedule "L" – A summary of the Receiver's fees and disbursements

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INTRODUCTION AND PURPOSE OF THE REPORT

1. MNP Ltd. was appointed Receiver (the "**Receiver**") of the property, assets and undertakings of 2093924 Ontario Inc. which operates under the banner name "Wash Factory" (**the "Wash Factory" or the "Company"**) pursuant to an order made effective on February 15, 2024 (the "**Receivership Order**") of the Honourable Justice G.S. Dunlop of the Court of King's Bench of Alberta (the "**Court**"). The Receivership Order was granted on January 12, 2024, however the Receiver's obligations pursuant to the Receivership Order did not come into effect, and the Receiver was not considered to be in possession or control of the property of the Company until the Receivership Order was filed in this Action.
2. The Wash Factory operates a full-service 12 bay truck wash located in Edmonton, Alberta (the "**Business**"). The Company purchased the truck wash in 2017 from 1643434 Alberta Ltd. ("**1643**"), who operated the truck wash under the licensed trademark name Rock-N-Wash®. Around the same time, the Company and a related corporation to 1643 also entered into a license agreement, permitting the Company to use certain registered trademarks and a patent owned by that related party and associated with Rock-N-Wash®. However, as at the date of the Receivership, the Company does not appear to be using the trademarks and is not operating under the banner Rock-N-Wash®.

3. In accordance with a January 9, 2024 Alberta Corporate Registry Search, the principal Shareholders of the Company are Kim Hee Seon (50%) and Kim Hyeong Sik (50%) (the "**Shareholders**"). Kim Hee Seon is the sole director.
4. The Company is the registered owner of the trade name "Wash Factory". A copy of an Alberta Trade Name/Partnership Search of the Wash Factory is attached to this First Report as **Schedule "A"**.
5. This is the Receiver's First Report to Court (the "**First Report**") and its purpose is to advise the Court with respect to the following:
 - the activities of the Receiver since being appointed;
 - proposed sale of the assets of the Company as a going concern;
 - proposed declaration in respect of a patented design of the building in which the Wash Factory operates, or in the alternative, the assignment of a license agreement in respect of such patented design;
 - priority creditors;
 - Interim Statement of Receipts and Disbursements; and,
 - a summary of professional fees accrued to May 31, 2024.
6. In preparing the First Report and making comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information of the Company, the Company's books and records, and information from other third-party sources (collectively, the "**Information**"). 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 generally accepted assurance standards or other standards established by the Chartered Professional Accountants of Canada.
7. Materials with respect to this proceeding can be found on the Receiver's website at <https://mnpdebt.ca/en/corporate/corporate-engagements/2093924-ontario-inc>.

ACTIVITIES OF THE RECEIVER

8. Upon the filing of the Receivership Order, the Receiver visited and took possession of the Wash Factory located at 4803 – 55 Avenue in Edmonton, Alberta (hereinafter referred to as the "**Property**").
9. The Receiver met with the operations manager of the Wash Factory, Jason Kim ("**Jason**"), who is the son of the Shareholders. After having initial discussions with Jason, the Receiver and interested stakeholders agreed that it was in the best interests of the estate for Jason to remain in his position as operations manager throughout the receivership proceedings to allow the Wash Factory to be sold as a going concern.

10. The Receiver met with each of the initial employees to notify them about the receivership and ensure them that ongoing wages and employee benefits would be paid. Each of the employees agreed to remain employed through the receivership proceedings.
11. In addition to discussions with management and employees, the Receiver:
 - collected relevant books and records of the Company;
 - attended with a locksmith and changed locks to the Property;
 - set up new utility accounts for the Property;
 - contacted financial institutions to secure control of the existing bank accounts maintained by the Company; and,
 - confirmed that the Company's insurance policy provided for adequate insurance coverage and made arrangements to pay the ongoing premiums.
12. On February 20, 2024, the Receiver issued the Notice and Statement of Receiver pursuant to Sections 245 and 246 of the *Bankruptcy and Insolvency Act* to the known creditors of the Company which is required to be filed within 10 days of the Receiver's appointment. Attached to this First Report as **Schedule "B"** is a copy of the Notice and Statement.
13. In the writing of this report, the Receiver has noted that due to a clerical error in its office, the Notice and Statement was e-filed with the Office of the Superintendent of Bankruptcy within the prescribed timeframe, however, the Notice and Statement was not mailed to the creditors until March 7, 2024, which is outside the prescribed 10 day timeframe. The Receiver is seeking an order of the Court approving the late notice to creditors, *nunc-pro-tunc*, due to the unfortunate oversight. The Receiver is not aware of any creditors who have been prejudiced as a result of the Notice and Statement being sent late.
14. At the time of the Receiver's appointment, both Jason and Hee Seon Kim had taken up residence at the Property, but the Receiver understands that they have since found new living arrangements.

MARKETING AND SALE OF THE BUSINESS

15. Prior to the Receiver's appointment, Jason and the Shareholders had engaged a realtor, Sheryl Leskiw of Diamond Realty & Associates Ltd. (the "**Realtor**") to market the Business. The Realtor specializes in the sale of car washes in and around Alberta. The Realtor's website which lists her various credentials, can be found at <https://www.thecarwashgirl.com/>.
16. Jason had been working with two potential purchasers prior to the Receiver's involvement, however, these potential purchasers did not remove conditions on their respective offers by the agreed upon condition removal date.

17. The Receiver understands that Jason directed the Realtor to privately source potential buyers from market contacts rather than list the Wash Factory publicly as he had concerns that a public listing would have a negative effect on its value.
18. The Realtor advises that prior to the Receiver's involvement, she solicited offers for the Wash Factory from October 2023 through to the date the Receivership Order took effect (approximately 4 months) (the "**Pre-Receivership Sales Process**"). During that time, the Realtor notes:
 - Jason directed the Realtor to market the Property discreetly without the use of MLS or the Realtor's website;
 - the Realtor has 17 years of experience selling car washes in the Alberta market and a large database of over 4,000 clients such that they are often able to secure a sale without the need for public advertising;
 - the price sought by Jason for the Business was in a range where there was likely little to no pool of buyers as most buyers in the price range sought would typically build new rather than purchase a used facility;
 - during the course of their involvement, the Realtor contacted and spoke to many players in the car wash industry regarding a potential acquisition; and,
 - the majority of buyers were not interested in submitting an offer to purchase the Business citing concerns regarding declining year-over-year revenue earned by the Wash Factory and competition from a newly built car wash facility in close proximity to the Wash Factory.
19. Jason received two (2) offers to purchase the Business from prospective purchasers prior to the receivership, however, as noted, the offers did not come to fruition as conditions were not satisfied. Details on the pre-receivership offers are set out in the Confidential Addendum to the Receiver's First Report (the "**Confidential Addendum**").
20. On February 19, 2024 the Realtor contacted the Receiver advising that one of the prospective purchasers who had been working with Jason, Klair Group Industries Inc. (the "**Klair Group**"), wished to resubmit an offer to the Receiver for consideration, which they did, on February 20, 2024.
21. The Klair Group, who operates and is known under the name "Klarity Wash", has operated as a premier truck wash service in Alberta since 2002. Klarity Wash has four locations across Alberta and with over 20 years experience in the industry is well positioned to integrate and operate the Wash Factory into its existing portfolio. The Klair Group boasts a loyalty program with over 8000 members.
22. The Receiver entered into negotiations with the Klair Group which resulted in the signing of an Asset Purchase Agreement ("**APA**") on March 13, 2024 for the purchase of the Business (the "**Klair Group APA**"). The Klair Group APA contained a due diligence and financing condition for the benefit of the buyer. All details with respect to the Klair Group APA are contained in the Confidential Addendum. A copy of the Klair Group APA is attached as **Confidential Schedule "B"** to the Confidential Addendum.

23. The purchase price offered in the Klair Group APA was comprised of a cash component (subject to financing) as well as a Vendor Takeback component, which was negotiated with and agreed to by Jason, on behalf of the Shareholders.
24. Subsequent to the execution of the Klair Group APA, the Receiver provided the Klair Group with information it requested to complete its due diligence on the Business, including, but not limited to, financial reporting about the ongoing operations of the Business. Additionally, as a condition of the Klair Group APA, the Receiver agreed to, funded, and provided the January 1, 2024 year end financial statements for the Wash Factory which were prepared by the Wash Factory's existing accountant.
25. After review of the financial information, the Klair Group advised the Receiver that it was seeking to reduce its purchase price as the financial reporting of the Wash Factory showed evidence of consistent declining revenues year-over-year for a period of three years.
26. The Receiver commissioned an updated appraisal from Harrison Bowker Valuation Group which was received on April 3, 2024 (the "**Harrison Bowker Appraisal**"). A copy of the Harrison Bowker Appraisal is attached as **Confidential Schedule "A"** to the Confidential Addendum.
27. After further negotiation, the Receiver and the Klair Group agreed to the reduced purchase price and the Receiver and the Klair Group entered in an amended APA on April 10, 2024 (the "**Amended Klair Group APA**"). A copy of the Amended Klair Group APA is attached as **Confidential Schedule "C"** to the Confidential Addendum.
28. The Amended Klair Group APA remained subject to a financing and due diligence condition (the "**Purchaser's Conditions**"), in addition to a condition requiring court approval.
29. The Receiver consulted Jason, on behalf of the Shareholders, in respect of the Amended Klair Group APA prior to the Receiver agreeing to the amend terms and its execution. Jason, on behalf of the Shareholders, provided written agreement to the amended terms, including the reduced purchase price. Two days following the execution the Amended Klair Group APA, Jason, on behalf of Shareholders, rescinded their support. By this time, the Amended Klair Group APA was a legally binding agreement, albeit subject to the Purchaser's Conditions and subject to approval of this Honourable Court, and the Receiver is of the view that it would have been unfair and a breach of its terms to terminate it prior to the Purchaser's Conditions being satisfied. A copy of the correspondence between Jason and the Receiver is attached as **Confidential Schedule "D"** to the Confidential Addendum.
30. After execution of the Amended Klair Group APA, the Klair Group sought a number of extensions to remove the Purchaser's Conditions, mainly to provide additional time for their lender to underwrite the financing. The Receiver provided various periodic extensions, however, in exchange the Receiver was authorized to negotiate with other parties to secure back-up offers for the Business.
31. During the course of the receivership, the Receiver received expressions of interest from three parties in addition to the Klair Group. On May 14, 2024, the Receiver provided the three interested parties with the required documents and instructions to submit an offer to purchase, which were due on or before May 24, 2024, being the condition date of the latest

extension of the Amended Klair Group APA. As of May 24, 2024 the Receiver received one additional back-up offer. The remaining two parties did not submit offers.

32. The back-up offer was for a quantum well below the purchase price in the Amended Klair Group APA. Details on the back-up offer are provided in the Confidential Addendum.
33. The Receiver provided the Klair Group with one final extension to waive its financing condition from May 24, 2024 to June 5, 2024. The Klair Group subsequently removed its conditions on June 5, 2024.
34. The Receiver recognizes that the sales process in this receivership did not follow a traditional Sales and Investment Solicitation Process (“**SISP**”), however, the Receiver is of the opinion that the Amended Klair Group APA is fair and reasonable in the circumstances and in the best interests of the receivership estate for the following reasons:
 - Jason, on behalf of the Shareholders, had been marketing and attempting to sell the Wash Factory as a going concern for four months prior to the Receiver’s appointment, and therefore the Business was exposed to the market for a reasonable period of time;
 - purchase contracts entered into in the Pre-Receivership Sales Process consisted of offers that were at or near the Fair Market Value arrived at in the Harrison Bowker Appraisal. However, the Receiver is of the view that the values in the Pre-Receivership Offers were not attainable, as evidenced by the inability of the prospective purchasers to remove their conditions and complete the transactions contemplated by the offers;
 - the Amended Klair Group APA is within the value ranges arrived at in the Harrison Bowker Appraisal and while the purchase price in the Amended Klair Group APA is less than the full Fair Market Value, it is well above the Forced Sale Value provided for in the same appraisal;
 - the Fair Market Value arrived at in the Harrison Bowker Appraisal is subject to certain limitations and assumptions in the appraisers analysis which include but may not be limited to:
 - i. it does not account for aging equipment and substantial repairs and upgrades required to maximize operational capacity, a factor which has been raised by prospective purchasers and which has influenced the offers received;
 - ii. the Fair Market Value recognizes potential future up-side revenue in its calculations;
 - iii. the Fair Market Value is based on an estimated market exposure time of 365 days; and,
 - iv. it does not consider the impact of newly established competition in the area;
 - administering a SISP will take time and the estate will incur additional costs which would substantially increase the interest accrued on the secured debt, the

- professional fees that would be incurred to initiate and carry out the SISP, the additional costs that would be incurred to continue to operate the Business, and other costs such as property taxes coming due;
 - the sale proceeds from the Amended Klair Group APA will be sufficient to pay the priority debt of the Company and most of the secured debt. The Amended Klair Group APA is supported by the Company's senior secured lender, the Bank of Montreal who would likely bear the increased costs of administering a SISP; and
 - the Amended Klair Group APA was initially supported by the Shareholders, despite them having rescinded their support after the Receiver had agreed, in writing to the Amended Klair Group APA.
35. The estimated net proceeds available to the estate from the Amended Klair Group APA are detailed in the Confidential Addendum.

LICENSE AGREEMENT WITH SLAZS INVESTMENTS LTD.

36. The Company, as licensee, is a party to a Trademarks & Patent License Agreement dated as of March 20, 2017 and executed April 10, 2017 (the "**License Agreement**"). Slaz Investments Ltd. is the Licensor and counterparty to the License Agreement. A partial copy of the License Agreement is attached to this First Report as **Schedule "C"**.
37. Slaz Investments Ltd. was originally the registered owner of the following trademarks and patent:
- the trademark name "ROCK-N-WASH", Canadian Application No.1,569,597 (the "**Name**");
 - the trademark slogan "REVOLUTIONIZING THE CAR WASH EXPERIENCE", Canadian Registration No. TMA867814 (the "**Slogan**");
 - the trademark logo ROCK N WASH, Canadian Registration No. TMA867815 (the "**Logo**" and collectively with the Name and the Slogan, the "**Trademarks**"); and
 - three Door Concept Design, Canadian Patent Application Number 2767610 (the "**Patent**").
38. In 2022, the Trademarks were transferred to 1643434 Alberta Ltd. ("**1643**"), and the Patent was also transferred to 1643, though the exact date that the Patent was transferred is not known. A copy of the registered Trademarks and Patent obtained from the Canadian Intellectual Property Office are collectively attached to this First Report as **Schedule "D"**.
39. Slaz Investments Ltd. and 1643 are related corporations for the following reasons:
- Sylvain Blouin was the sole director of Slaz Investments Ltd., and its sole voting shareholder was Blouroy Summit Investments Corp. Slaz Investments Ltd. was dissolved on September 1, 2023. A copy of an Alberta Corporate Search for Slaz Investments Ltd. is attached to this First Report as **Schedule "E"**;

- 1643 is an active Alberta corporation, Sylvain Blouin is its sole director and Blouroy Summit Investments Corp. is its sole voting shareholder. 1643 was struck from the Alberta Corporate Registry on May 2, 2019, and revived on May 23, 2019. A copy of an Alberta Corporate Search for 1643 is attached to this First Report as **Schedule “F”**; and
 - Blouroy Summit Investments Corp. is an active Alberta Corporation, Sylvain Blouin and Louise Roy are its directors and voting shareholders, each holding 50% of the voting shares of the company. A copy of an Alberta Corporate Search for Blouroy Summit Investments Corp. is attached to this First Report as **Schedule “G”**.
40. 1643 is the registered owner of an Alberta tradename “ROCK-N-WASH”. A copy of an Alberta Trade Name/Partnership Search for “ROCK-N-WASH” is attached to this First Report as **Schedule “H”**. The Receiver understands that 1643 operates a car wash facility in Sherwood Park Alberta under the banner “ROCK-N-WASH®”.
41. The Company entered into a Real Estate Purchase Contract with 1643 to purchase the Business. The effective date of the Real Estate Purchase Contract is unclear. It was executed on November 25, 2024 by the Company, and on November 29, 2016 by 1643, operating as Rock-N-Wash. It was then amended on April 2, 2017 and again on April 3, 2017 (the “**2017 Purchase Agreement**”). The 2017 Purchase Agreement is attached to this First Report as **Schedule “I”**.
42. Paragraph 9 of the License Agreement refers to a sale and purchase agreement dated as of April 24, 2017. The Receiver does not have a copy of a purchase and sale agreement dated as of April 24, 2017, however the 2017 Purchase Agreement was provided to the Receiver by the Company as the applicable purchase and sale agreement between 1643 and the Company, and given the proximity of the execution, conditional removal, and closing dates noted in the 2017 Purchase Agreement, to the date of the execution of the License Agreement and the date noted in Paragraph 9 of the License Agreement, the Receiver is of the view that the 2017 Purchase Agreement is likely the purchase agreement referred to in the License Agreement.
43. The License Agreement grants the Company a non-exclusive right and license to use the Trademarks and Patent in connection with the operation of a Car & Truck Wash facility located at the Property (the “**License**”).
44. The Receiver notes the following terms of the License Agreement (some of which have been paraphrased for ease of reference):
- the License Agreement and the License shall remain in full force and effect as long as the “Business” is in operation or until terminated by the Licensor. “Business” is defined as the “operation of a Car & Truck Wash facility located in Edmonton, Alberta more specifically located at 4803-55 Avenue, T6B 3S3”;
 - it does not require the Company to pay any fees to use the Trademarks and Patent;
 - it requires the licensee (in this case, the Wash Factory) to maintain quality control of the Trademarks and Patent such that no reputational damage is caused to the Licensor, Slazs Investment Ltd. (the “**Quality Control**”);

- under the sale and purchased [sic] agreement dated of April 24, 2017, it is agreed by the Licensor that the License has the rights to use “the Marks” for as long as the Quality Control are maintained;
- the Licensee's rights to use the Trademarks and Patent cannot be assigned to any third party by the Licensee without the prior written approval of the Licensor; and
- there are termination provisions permitting the Licensor to terminate the agreement, however there do not appear to be any provisions permitting the Licensee to terminate the agreement.

45. The Receiver notes the following terms of the 2017 Purchase Agreement:

- the sale of the Property to the Company included all attached goods, without reservation (paragraph 1.(d));
- Unless otherwise agreed to in writing, Title to the Property will be subject to any reservations and exceptions stated on the certificates of title, will be free and clear of all liens, encumbrances, registrations and obligations except those implied by law; may be subject to non-financial obligations now on title such as easements, utility right of ways, covenants and conditions that are normally found registered against property of this nature, and non-financial encumbrances which have been accepted by the Buyer as Permitted Encumbrances (paragraph 1.(e));
- “Permitted Encumbrances” is not defined;
- A Certificate of Title for the Property is attached to this First Report as **Schedule “J”**. There are no registrations on title reserving 1643's rights in respect of the Patent;
- The Seller shall enter into a license agreement with the Buyer (the Company), which allows the Buyer to use the Trade Name Rock-N-Wash®, the Logo, the Slogan, and the Website, “Rock-N-Wash”® email address and the existing Social Media Platforms **and to assign the same to future owners, free of charge** (paragraph 4.(f)). However it does not appear to require the Seller to enter into a license agreement in respect of the Patent;
- the License Agreement in respect of the use of the Trade Name (and not the Patent) was required on closing (paragraph 9.(f));
- the Seller represented and warranted to the buyer that all equipment shall be in good working order on closing (paragraph 13.(g)); and
- the Seller and the Buyer each acknowledged that except as otherwise described in the 2017 Purchase Agreement, there are no other warranties, representations or collateral agreements made by or with the other party about the Property (paragraph 15).

46. The Receiver was contacted by Mr. Blouin on behalf of 1643, the former owner of the Wash Factory (though it operating using the name Rock-N-Wash® at the time) and, as noted above, is an entity directly related to Slazs Investment Ltd. and now the current owner of the Trademarks and Patent.

47. The Receiver held a discussion with 1643 regarding the sale of the Wash Factory, the existence of the Trademarks and Patent, 1643's expectation that it be compensated by the prospective purchaser for the use of the Trademarks and Patent, and assignment of the License Agreement to the Klair Group, though the Receiver did not disclose the identity of the Klair Group to 1643 at that time. 1643 has expressed its objection to the assignment of the License Agreement citing concerns that the License Agreement, when originally signed, did not contemplate royalties for the use of the Trademarks and the Patent.
48. Mr. Blouin advised the Receiver that it now expects to be financially compensated by the Klair Group, despite the terms of the License Agreement, for use of the Patent. The Receiver responded to 1643 that neither the License Agreement nor the 2017 Purchase Agreement entitle it to demand financial compensation and that the Receiver intended to proceed with a sale of the Wash Factory to a third party since it presented the best offer, and if necessary, to assign the License Agreement to the purchaser, subject to Court approval. The Receiver also advised 1643 that it would have an opportunity to oppose the Receiver's application in Court and requested that it not attempt to negatively influence the Receiver's sales process by contacting the purchaser and demanding financial compensation related to the License Agreement.
49. However, the Receiver was advised by the Klair Group that Mr. Blouin contacted the Klair Group and advised that 1643 demands to be financially compensated for the use of the Trademarks and the Patent and that the Klair Group was concerned that 1643 may seek legal action against it if it proceeds with the purchase.
50. The Amended Klair Group APA requires the Receiver to, upon closing, cease to use the trade name "Wash Factory" associated with the Business and consent to the purchaser's use of the name "Wash Factory"; it does not require the Receiver to permit the purchaser to use the Trademarks.
51. The Purchaser has advised counsel to the Receiver that it does not intend to use the Trademarks. However, it will require the use of the Patent since the building has been constructed using the Patented Design (as hereinafter defined).
52. The Receiver understands that the Patent is in respect of a design method by which vehicles move through the truck wash facility in through one door and out through two doors in a single direction, in order to streamline traffic and reduce congestion in low-visibility situations (the "**Patented Design**"). The Receiver has been advised by Jason that the Wash Factory building has been designed using the Patented Design. Attached to this First Report as **Schedule "K"** is a copy of the Canadian Patent Application submitted to the Canadian Intellectual Property Office by Slaz Investments Ltd. describing the Patented Design.
53. Jason has advised that the Patented Design is how the building was initially constructed and is an integral part of the building. He also advised the Receiver that it would be next to impossible to refigure the building so that the Patented Design is not used.
54. The Receiver is of the view that an assignment of the License Agreement is not necessary, and that 1643's Patent rights in the design of the Property have been exhausted for the following reasons:

- the Klair Group has advised that it does not require the use of the Trademarks;
- the Amended Klair Group APA does not require that the Receiver grant a license to the Klair Group to use the name Rock-N-Wash®, but does require the Receiver to consent to the Klair Group's use of the Wash Factory, which is registered to the Company and over which 1643 does not have intellectual property rights in;
- the 2017 Purchase Agreement did not clearly impose any limitation upon the Company intended to affect the rights of subsequent purchasers to use the Property as designed;
- the 2017 Purchase Agreement only required that a license agreement be entered into in order to enable the Company to use the name Rock-N-Wash®, the Trademarks, and associated social media and not the Patent, which implies that the parties intended for the Patented Design to be subsumed in the sale; and
- in any event, the license agreement contemplated by the 2017 Purchase Agreement was required to permit future owners of the Business to use the Trademarks, free of charge, which suggests that any Trademark and Patent rights owned by 1643 were intended to be transferred to the Company free of any restrictions on its ability to transfer such rights free of charge to another purchaser.

55. If the Receiver is incorrect, and an assignment of the License Agreement is necessary in order to permit the Klair Group to use the Property as designed, then the Receiver is of the opinion that the assignment of the License Agreement is necessary in order to preserve the value of the Wash Factory and maximize recovery for the stakeholders since:

- the costs of altering the Patented Design would require a substantial and material renovation at significant cost to stakeholders in this estate;
- it is likely that the Receiver would have to terminate operations of the Wash Factory in order to complete the renovations, which would cause a cessation of revenues earned from operations and would likely negatively impact the value of the goodwill associated with the Wash Factory; and
- the Receiver does not know what impact any renovations would have on the current value of the Business.

56. The Receiver also believes that the assignment of the License Agreement is not unjust in the circumstances since:

- the Receiver is not proposing any amendments to the terms of the License Agreement as currently written and so 1643 would not be prejudiced by the assignment;
- the Receiver is not requesting that the Klair Group be able to use the Patented Design in the construction of other buildings; 1643 would retain its rights in this regard; and

- the Klair Group is able to comply with the licensee's obligations under the License Agreement.
57. Further, 1643 has also submitted two offers to the Receiver for the purchase of the Wash Factory during these receivership proceedings. The offers, which are detailed in the Confidential Addendum, are for values deemed unacceptable by the Receiver.
58. The Receiver is concerned with the obvious incentive 1643 has to oppose the assignment of the License Agreement to a new buyer of the Business since the inability of the Receiver to assign the License Agreement in respect of the Patent will likely cause any such sale to fail unless it is to 1643, or a related party to 1643. In the Receiver's view, this incentive reduces the prospective buyer pool to the detriment of other stakeholders, and creates unfairness in any sales process administered by the Receiver.
59. Finally, the 2017 Purchase Agreement requires that 1643 assign the License Agreement to any future owners, not only the Company, free of charge. Therefore 1643's attempt to demand compensation from the Klair Group for use of the Patent appears to contradict what it agreed to do in the 2017 Purchase Agreement.
60. The Receiver is seeking a declaration that the Patent rights in the Patented Design have been exhausted, or in the alternative, if such rights have not been exhausted, the Receiver is seeking an order of the Court authorizing the Receiver to assign the License Agreement to the Klair Group as, in the Receiver's view, the assignment through the receivership proceedings is the most efficient and cost-effective manner.
61. In the alternative, if the Court declines to approve the Receiver assigning the License Agreement to the Klair Group, the Receiver is seeking an order from the Court authorizing it to assign the Company into bankruptcy so that the trustee in bankruptcy may seek to assign the License Agreement under section 84.1 (1) of the *Bankruptcy and Insolvency Act*.
62. The Receiver notes that paragraph 3(s) of the Receivership Order permits the Receiver to assign the Company into bankruptcy with prior court approval.

PRIORITY CREDITORS

Canada Revenue Agency ("CRA")

63. CRA completed a trust examination on the payroll and GST records of the Company. As a result, CRA has filed the following claim:
- In relation to payroll source deductions, a claim of \$3,062.40 of which \$2,737.11 represents the deemed trust portion.
64. No claim for GST has been received to date.

Property Taxes

65. The Receiver obtained a property tax search for the Property on February 28, 2024. As of the date of the search, the outstanding property taxes totaled \$78.49.

Bank of Montreal

66. The Bank of Montreal has registered a security interest as against the Wash Factory as follows:
- a. General Security Agreement (“**GSA**”) dated in or around December, 2020 encompassing all present and after acquired real and personal property of the Wash Factory. The security registrations were made at the Personal Property Registry (“**PPR**”) on December 18, 2020; and,
 - b. Collateral Mortgage dated December 19, 2020 registered against title to the Property in the principal amount of \$6,005,000,
67. In accordance with the December 6, 2023 Affidavit of Ed Barrington of the Bank of Montreal the total approximate balance outstanding to the Bank of Montreal from the Wash Factory was \$5,612,235.08.
68. The Bank of Montreal provided an updated payout figure on or around February 16, 2024 which had a revised balance of \$5,773,412.23.
69. The Receiver's counsel has reviewed the documents relevant to Bank of Montreal's security and determined its security to be valid and enforceable thereby giving it a first position secured charge over the Property.

Other Priority Creditors

70. The Receiver is not aware of any other priority creditors at this time.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

71. Attached to this First Report as **Schedule “L”** is a copy of the Receiver's Interim Statement of Receipts and Disbursements dated May 31, 2024. The Receiver is currently holding a sum of \$242,794.77 in its trust account.

PROFESSIONAL FEES

72. The fees and disbursements of the Receiver (inclusive of GST) total \$56,812.55 as of May 31, 2024. In the Receiver's opinion, the time and disbursements incurred by the Receiver in the course of its duties are fair and reasonable in the circumstances. A summary of the Receiver's fees and disbursements is attached as **Schedule “M”**.
73. The fees and disbursements of the Receiver's counsel total \$31,693.85 as of April 30, 2024. A summary of the fees and disbursements of the Receiver's counsel is attached as **Schedule “M”** to this First Report. The Receiver has reviewed the fees and disbursements of its legal counsel and is of the opinion that it is fair and reasonable in the circumstances. Subject to matters of solicitor and client privilege, the accounts of the Receiver's counsel can be made available should an interested party request to review them.

RECOMMENDATION AND CONCLUSION

74. Based on the foregoing and in summary:

- approving the service of the Notice and Statement of Receiver, *nunc pro tunc*, will not prejudice any creditors and is necessary in order for the proper administration of these court supervised proceedings;
- the Receiver's activities to date as described in this First Report are reasonable and appropriate;
- the Amended Klair Group APA represents the highest and best price for the Wash Factory and it is commercially reasonable in the circumstances;
- a Restricted Court Access Order restricting the publication of sensitive commercial information contained in the Confidential Addendum is necessary in the circumstances in order to preserve the value of the Wash Factory until such time that the Receiver is able to complete a sale of the same; and
- an order either declaring that 1643's patent rights have been exhausted or permitting the Receiver to assign the License Agreement to the Klair Group is reasonable, appropriate and necessary in order for the Receiver to maximize value to the estate's stakeholders and 1643 will not suffer any prejudice in doing so.

75. In conclusion, the Receiver respectfully requests that this Honourable Court grant the following orders:

- a) deeming service of notice of this Application and all materials in support to be good and sufficient and abridging the time for service to the time actually given;
- b) approving the late service of the Notice and Statement of Receiver, *nunc-pro-tunc*, as noted in paragraph 13 of this First Report;
- c) approving the activities of the Receiver and the sales process as described in the First Report;
- d) accepting the Amended Klair Group APA as described herein and more particularly set out in the Confidential Addendum;
- e) temporarily sealing the Confidential Addendum attached to this First Report in a Restricted Court Access Order;
- f) declaring that the rights of 1643 in the Patented Design have been exhausted and vesting title of the Property, including the Patented Design existing in the building, free and clear 1643's interest; and,
- g) if necessary, approving the assignment of the License Agreement to the Klair Group, or, in the alternative, authorizing the Receiver to assign the Company into bankruptcy to enable the assignment of the License Agreement.

2093924 Ontario Inc. – In Receivership;
the Receiver's First Report
June 17, 2024

All of which is respectfully submitted this 17 day of June, 2024.

MNP Ltd.

In its capacity as Receiver-Manager of

2093924 Ontario Inc.

And not in its personal capacity

A handwritten signature in black ink, consisting of a stylized 'K' and 'A' intertwined, enclosed within a circular scribble.

Karen Aylward, CIRP, Licensed Insolvency Trustee
Senior Vice President