

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 3RD
JUSTICE OSBORNE) DAY OF NOVEMBER, 2022
)

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

and

2722959 ONTARIO LTD. and 2156775 ONTARIO INC.

Respondents

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing MNP Ltd. (“MNP”) as an investigatory, non-possessory receiver (in such capacity, the “Receiver”) without security, of all of the assets, undertakings and properties of 2722959 Ontario Ltd. (“272”) and of the related or associated entity, 2156775 Ontario Inc. (“215”), acquired for, or used in relation to a business carried on by 272, was heard this day at 330 University Avenue, 7th Floor, Toronto, Ontario.

ON READING the Affidavit of Rod Randall, sworn July 12, 2022 and the Exhibits thereto, the Supplementary Affidavit of Rod Randall, sworn September 2, 2022 and the Exhibits thereto,

the Responding Affidavit of Frank D'Angelo, sworn October 18, 2022, and the Exhibits thereto, the Reply Affidavit of Rod Randall, sworn October 24, 2022 and the Exhibits thereto, on hearing the submissions of counsel for Canadian Western Bank, counsel for 272 and 215, and the other parties listed on the Counsel Slip, and on reading the Consent of MNP to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS and declares that 215 be and is hereby added as a respondent party in these proceedings.

3. THIS COURT ORDERS that pursuant to section 101 of the CJA, MNP is hereby appointed as Receiver, without security, of all of the assets, undertakings and properties of 272 and 215 acquired for, or used in relation to a business carried on by 272 and 215, including all proceeds thereof, including property held by 272 and 215 in trust for any third party (collectively, the "**Property**").

RECEIVER'S POWERS

4. THIS COURT ORDERS that, subject to the terms herein, 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 monitor 272's and 215's receipts and disbursements, including, without limitation, the right to access all information, computers, data, electronic or cloud-stored data, databases, or documents relating to 272's and 215's current and historical operations, including, without limiting the generality of the foregoing, having direct access to 272's and 215's banking statements, records and online banking data;
- (b) to have access to 272's and 215's premises at all times, without any requirement for prior notice;
- (c) to take physical inventories as may be necessary or desirable;
- (d) to take possession of and store any records and documents of 272 and 215, or records which relate in whole or in part to 272 or 215 and to review such records as may be necessary and advisable in connection with its mandate;
- (e) to take possession of any electronic records of 272 and 215, or electronic records which relate in whole or in part to 272 or 215 and any related computer hardware or software wherever located and to review such records as may be necessary and advisable in connection with its mandate;
- (f) to compel records of and conduct on-site inspections at the premises of any landlords of the Debtors or third parties who the Receiver believes may be in possession of any of the Property or Records (as defined below);
- (g) to obtain information from and engage with on behalf of 272 and 215 with any parties with whom 272 and 215 or any related party may have or had a business

relationship with including, IT consultants, co-packing arrangements, distribution licenses, and/or licenses related in whole or in part to the business of 272 and 215;

- (h) to obtain information from and engage with any suppliers, vendors, service providers, professionals or consultants of 272 and 215 as be necessary and advisable;
- (i) 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 Receiver's powers and duties, including without limitation those conferred by this Order;
- (j) if deemed necessary or advisable by the Receiver in its sole discretion, to deliver notices of examination to and examine under oath any Person (as defined herein) with knowledge of the affairs of 272 and 215;
- (k) to report to, meet with and discuss with such affected Persons (as defined herein) 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;
- (l) to conduct an investigation, review or accounting of the financial affairs of 272 and 215, including a review of the state, location and value of all assets and inventory of 272 and 215 as well a intercompany transfers between 272 and 215 or to any other affiliated entity;

- (m) to inquire into and report to the Court on the financial condition of 272 and 215, and the Property, and any material adverse developments relating to the financial condition of 272 and 215, and/or the Property;
- (n) to report to the Court on any matter it deems appropriate;
- (o) to attend this Court to seek amendments of this Order as it deems necessary or desirable; and
- (p) 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 272 and 215, and their shareholders, officers and directors and without interference from any other Person.

5. THIS COURT ORDERS that, for greater certainty, the Receiver shall not be in possession or control of the Property (other than with respect to Records (as defined below)) without a further order of this Court and shall not be required to issue the statement set out in Section 246 of the BIA without a further order of this Court.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

6. THIS COURT ORDERS that (i) 272 and 215, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on either of their instructions or behalf, including Mr. Frank D'Angelo, and (iii) 215 and

all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, including Mr. Mike Cavajal and Canada Revenue Agency (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 during regular business hours, and shall deliver all such Property to the Receiver upon the Receiver’s request, subject to paragraph 5 herein.

7. THIS COURT ORDERS that all Persons, including Mr. Frank D’Angelo, Mr. Mike Cavajal and Ms. Gemma Runaghan 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 272 and 215, including:

- (a) electronic records wherever located;
- (b) email accounts under the domain dangelobrand.ca and email accounts in any cloud-based email system such as Hotmail or Gmail, including, but not limited to gemmarunaghan@hotmail.com, gemma.runaghan@dangelobrand.ca, gemma.runaghan@hotmail.com, mrfrankdangelo@hotmail.com and frank@dangelobrand.ca; and
- (c) 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 7 or in paragraph 8 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. For avoidance of doubt and subject to this paragraph 7 hereof, whenever the Receiver seeks to access a document or information relating to 272 or 215 under this Order, including without limitation the Property or Records (as defined below), the Receiver shall be given such document or information in accordance with this Order notwithstanding that they may relate in whole or in part to other businesses or Persons.

8. 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 Records contained therein whether by way of printing the information onto paper or making forensic copies of computer disks or such other manner of retrieving and copying the Records 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 credentials access codes, account names and account numbers that may be required to gain full access to the Records.

PRODUCTION AND DISCLOSURE

9. THIS COURT ORDERS that without limiting the generality of paragraphs 6, 7, and 8, by no later than 5:00pm (Toronto Time) on December 2, 2022, all Persons, including Mr. Mike Carvajal, Mr. Frank D'Angelo and Ms. Gemma Runaghan shall provide to the Receiver forensic copies of Records contained in:

- (a) email accounts under the domain dangelobrand.ca and email accounts in any cloud-based email system such as Hotmail or Gmail, including, but not limited to gemmarunaghan@hotmail.com, gemma.runaghan@dangelobrand.ca, gemma.runaghan@hotmail.com mrfrankdangelo@hotmail.com and frank@dangelobrand.ca; and
- (b) any text communications in relation to 272 and 215 on any mobile device, personal computer or tablet, including but not limited to text messages on iMessage, Whatsapp or similar applications; and
- (c) any information relating to sales or transfers as between 272 and 215 or any other related company.

10. THIS COURT ORDERS that, subject to paragraphs 6, 7, and 8 and without limiting the generality of paragraphs 6, 7, and 8 any professional engaged by 272 and 215 including Warren Feldstein and Feldstein & Associates LLP is authorized and directed to provide to the Receiver, at

its request, copies of all Records in their possession, including, but not limited to, all notes, correspondence, working papers and source documents of any nature.

ADDITIONAL DUTIES OF AND RESTRICTIONS ON 272 AND 215

11. THIS COURT ORDERS that 272 and 215 shall:

- (a) not sell, transfer, gift, convey or otherwise dispose of Property, other than in the ordinary course of business, without the prior written consent of the Applicant (other than amounts to pay down obligations owing to the Applicant);
- (b) not make, or enter into any contract, amendment or other written agreement that involves an expenditure greater than \$2,500.00 without the prior written approval of the Receiver; and
- (c) provide to the Receiver, upon request of and on or before the deadline required by the Receiver, such reporting as may be required by the Receiver in its sole discretion, including, without limitation, 272's and 215's financial condition, daily, weekly or monthly receipts and disbursements, inventory counts or lists, sales reports, accounts payable and receivable, profit and loss statements, locations and listings of assets.

NO PROCEEDINGS AGAINST THE RECEIVER

12. 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 272 AND 215 OR THE PROPERTY

13. THIS COURT ORDERS that no Proceeding against or in respect of 272, 215, 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 272, 215, or the Property are hereby stayed and suspended pending further Order of this Court, save and except, pending further Order of this Court, the action 2722959 *Ontario Inc. et al v Canadian Western Bank et al*, bearing Court File No. CV-22-00001968-0000.

NO EXERCISE OF RIGHTS OR REMEDIES

14. THIS COURT ORDERS that all rights and remedies against 272, 215, 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 272 and 215 to carry on any business which 272 and 215 is not lawfully entitled to carry on, (ii) exempt the Receiver or 272 and 215 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

15. 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 272 and 215, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

16. THIS COURT ORDERS that all Persons having oral or written agreements with 272 and 215 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 272 and 215 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 272's and 215'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 272 and 215 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.

EMPLOYEES

17. THIS COURT ORDERS that 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.

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. 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 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. 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.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their 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.

SERVICE AND NOTICE

21. 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/e-service-protocol/>) 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.

22. 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 272's and 215's creditors or other interested parties at their respective addresses as last shown on the records of 272 and 215, 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

23. 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.

24. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a Trustee in bankruptcy of 272 and 215.

25. 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.

26. 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.

27. 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.

28. THIS COURT ORDERS that the Receiver, its counsel and counsel for the Applicant are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the creditors of 272 and 215 or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

CANADIAN WESTERN BANK

Applicant

and 2722959 ONTARIO LTD. and
2156775 ONTARIO INC.
Respondents

Court File No.: CV-22-00684100-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**ORDER
(APPOINTING RECEIVER)**

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada, M5H 3S1

Gavin H. Finlayson LSO#: 44126D
gfinlayson@millerthomson.com
Tel: 416.595.8619

Kaleigh Sonshine LSO#: 70105T
ksonshine@millerthomson.com
Tel: 416.595.8166

Lawyers for the Applicant,
Canadian Western Bank