



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

(Court Seal)

CANADIAN WESTERN BANK

Applicant

and

2722959 ONTARIO LTD.

Respondent

APPLICATION UNDER SUBSECTION 47 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 APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing to be scheduled by the Court, at 330 University Avenue, Toronto, Ontario,


- In writing
- In person
- By telephone conference
- By video conference

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

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IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date 2022-JULY-14 Issued by Gurwinderjit Singh Brar  Digitally signed by Gurwinderjit Singh Brar
Date: 2022.07.15 08:58:19 -04'00'
Local Registrar

Address of court office: Superior Court of Justice
Commercial List
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: **2722959 ONTARIO LTD.**
4544 East Gate Parkway
Mississauga, ON
L4W 3W6

477 Reeves Way
Stouffville, ON
L4A 0A2

APPLICATION

1. The Applicant makes application for an Order substantially in the form attached hereto at Tab 3 to the Application Record, among other things, for the following relief:

- (a) abridging the time for service of this Application and the Application Record, and dispensing with service on any person other than those served;
- (b) appointing MNP LLP as interim and non-possessory receiver ("**MNP**" or "**Interim Receiver**"), without security, of the Respondent, 2722959 Ontario Ltd., pursuant to section 47 of the *Bankruptcy and Insolvency Act* (Canada) 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**") for thirty (30) days, subject to a further Order of this Court extending the relief sought; and
- (c) Such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

2. CWB Maxium Financial Inc., ("**CWB**" and the "**Bank**") is a financial institution providing specialized service in banking, trust and wealth management, including commercial loans to Canadian small and medium-sized enterprises;

3. 2722959 Ontario Ltd. is a corporation incorporated pursuant to the laws of Ontario ("**Debtor**"). The Debtor's principal place of business is located at 4544 East Gate Parkway, Mississauga, Ontario ("**Premises**"). The main business activities of the Debtor up until May 12, 2022, was the manufacturing and packaging of beverage drinks and

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edible oils, both through private labels and pursuant to co-packing arrangements including distribution licenses for brands such as AriZona Beverages;

4. The Debtor is indebted to the Bank in the aggregate principal amount of \$625,000.00 plus interest, fees and costs (the “**Indebtedness**”). The Indebtedness is evidenced by:

- (a) a demand non-revolving loan facility in the principal amount of up to \$500,000.00 and further evidenced and supported by a non-revolving credit agreement dated April 5, 2022, issued by the Debtor in favour of the Bank in the principal amount of \$500,000.00 (“**Demand Non-Revolving Loan Facility**”);
- (b) a demand loan facility in the principal amount of up to \$100,000.00 and further evidenced and supported by a demand note dated April 5, 2022, issued by the Debtor in favour of the Bank (“**Demand Loan Facility**”); and
- (c) a corporate credit card facility in the principal amount of up to \$25,000 and established by a corporate credit card application dated April 20, 2022 (the “**Credit Card Facility**”).

Collectively, the “**Credit Facilities**”;

5. Gemma Runaghan (“**Ms. Runaghan**”) is the sole officer and director of the Debtor. Runaghan holds the offices of President, Secretary and Treasurer of the Debtor;

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6. Frank D'Angelo ("**Mr. D'Angelo**") is the directing mind of the Debtor and at all material times held himself out as being the authorized representative of the Debtor with whom CWB dealt. He is also is Runaghan's spouse;

7. Ms. Runaghan and Mr. D'Angelo are guarantors of the Credit Facilities pursuant to Full Liability Guarantees dated April 5, 2022;

8. As security for the Debtor's obligations to the Bank, the Debtor granted a security interest in all of its assets, property and undertaking pursuant to a general security agreement dated April 5, 2022 (the "**GSA**");

9. It is a term of the GSA that the Bank is entitle to appoint a receiver upon the occurrence of an event of default thereunder;

10. It is a term of the GSA that upon the occurrence of any of the following events, the Bank is entitled to demand repayment of the Indebtedness owing by the Debtor:

- (a) the failure to make certain regular scheduled payments of principal and interest on the loan evidenced by the Demand Note and advanced pursuant to the terms of the Commitment Letter since May 7, 2022;
- (b) an adverse change in the financial condition of the Debtor; and
- (c) the failure to maintain insurance on the Bank's collateral;

EVENTS OF DEFAULT

11. No payments have been made under any of the Credit Facilities, contrary to the terms thereof;

12. The Debtor has admitted to being insolvent and has ceased active business operations as of May 12, 2022;

13. The Debtor's hydro was disconnected as a result of non-payment to its utility provider and the power remains shut down at the Debtor's Premises;

14. The Debtor's landlord has locked the Debtor out of its Premises as a result of non-payment of rent;

15. The Debtor unilaterally cancelled its insurance policy, effective June 20, 2022. The Bank's collateral is currently uninsured;

APPOINTMENT OF AN INTERIM, NON-POSSESSORY RECEIVER

16. The Debtor's inventory includes food and other perishable products since the Debtor is in the business of manufacturing beverages. Without electricity or access to its premises, the Debtor's inventory (which forms part of the Bank's collateral) may deteriorate over time;

17. Since the Debtor has been locked out of the Premises, the Bank is concerned that the landlord will distraint on the Debtor's equipment and inventory, which also form part of the Bank's collateral;

18. The Bank has requested basic information from the Debtor regarding the state of its collateral, including taxes, HST, and payroll, and whether collateral has been or will be removed, but the Debtor has refused to provide this basic information;

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19. It is not clear whether or not the Debtor's co-packing arrangements and distribution license with brands such as AriZona Beverages remain in place or have been impaired;

20. The Bank's collateral is at risk and may be eroded unless an Interim Receiver is immediately appointed to allow the Bank to obtain accurate and updated information to assess its collateral and options;

21. The appointment of an Interim Receiver also provides for a stay of proceedings that will provide stability while information is obtained that all stakeholders will benefit from;

22. The Debtor, Gemma Runaghan (the sole shareholder, officer, and director of the Debtor) and Frank D'Angelo (the directing mind and agent of the Debtor) have issued and served on the Bank a Statement of Claim for damages in the amount of \$280,000,000.00 for, among other things, alleged misrepresentations. The Bank denies the allegations in the Statement of Claim and will address those matters in due course within the action commenced by the Debtor. The Bank does not seek a stay of this Claim;

23. The Bank has lost confidence in the Debtor's management;

24. It is just and convenient that the Court grant the relief sought herein;

25. The Bank proposes that MNP be appointed as Interim Receiver of the Property;

26. MNP is a licenced trustee in bankruptcy and has consented to act as Receiver should the Court so appoint it;

27. The *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, including section 47;

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28. The *Courts of Justice Act*, R.S.O. 1990, c. C.43, including section 101;
29. Rule 2.03, 14, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg.194, as amended;
30. Such further and other grounds as the lawyers may advise and this Honourable Court may permit.

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

- (a) The Affidavit of Rod Randall sworn July 14, 2022;
- (b) The Consent of MNP to act as Interim Receiver; and
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 14, 2022

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Lawyers for the Applicant,
Canadian Western Bank

RCP-E 14E (September 1, 2020)

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at
TORONTO

NOTICE OF APPLICATION

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