

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

CANADIAN WESTERN BANK

Applicant

and

2722959 ONTARIO LTD. and 2156775 ONTARIO LIMITED

Respondents

**REPLY TO THE COST SUBMISSIONS  
SUBMITTED BY THE RECEIVER**

**September 19, 2023**

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TO: Service List

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THE RECEIVER**

1. The Receiver should be entitled to no costs against 215, 272 and D'Angelo.
2. I am enclosing a copy of an Order drafted by Mr. Turgeon and consented to by Mr. Klug on behalf of 215 and 272. Paragraph 5 of the Order provides that there will be no costs of this motion.
3. In paragraph 5 of the Receiver's submissions, Mr. Turgeon states that the Debtors are insolvent. That is not the case. In fact, the Canadian Western Bank advanced \$600,000.00 as part of a loan commitment in excess of \$5,000,000.00.
4. In reply to paragraph 6 of the Receiver's submissions, Mr. Turgeon relies on Section 243 of the BIA. This is not correct. I believe he is relying on Section 243 of the OBCA which is applicable on the dissolution of a corporation. Neither corporation has been dissolved. Section 243(1) of the OBCA states:

Despite the dissolution of a corporation, each shareholder to whom any of its property has been distributed is liable to any person claiming under section 242 to the extent of the amount received by that shareholder upon the distribution, and an action to enforce such liability may be brought.

5. Sections 183 and 197 of the BIA does not expand on the basis to award costs against a non-party (D'Angelo) as discussed in the decisions of *1318847 Ontario Ltd. v. Laval Tool & Mould Ltd.*, 2017 ONCA 184 (CanLII) and *Cornerstone Properties Inc. v. Southside Construction Management Limited*, 2020 ONCA 380 (CanLII) referred to in the Peel submissions.

6. I specifically to paragraphs 64, 73, 76, 77 and 78 of the *Laval* decision and paragraph 17 of the *Cornerstone* decision.

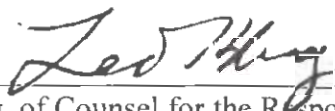
#### QUANTUM OF COSTS

7. 215 and 272 take no issue with the quantum of costs set out by the Receiver on a partial indemnity basis.

8. There should be no award of costs on a partial indemnity basis against the corporations or as against D'Angelo in favour of the Receiver.

Dated: September 19, 2023

ALL OF WHICH IS RESPECTFULLY SUBMITTED

  
\_\_\_\_\_  
Leo Klug, of Counsel for the Respondents  
(Moving Parties)

46

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )  
JUSTICE OSBORNE )  
 )  
 )

●, THE ●  
DAY OF ●, 2023

BETWEEN:

**CANADIAN WESTERN BANK**

Applicant

and

**2722959 ONTARIO LTD. and 2156775 ONTARIO LIMITED**

Respondents

**ORDER  
(Partial Lift of Stay)**

**THIS MOTION** made by 2156775 Ontario Limited (“215”) for an Order partially lifting the stay of proceedings (the “Stay”) effected under the Receivership Order of this Court dated November 3, 2022 (the “Receivership Order”) was heard this day at 330 University Avenue, Toronto, Ontario, by videoconference.

**ON READING** the Motion Record of 215, the ● report of the Receiver dated ●, 2023, and on hearing the submissions of counsel for the Receiver, counsel for 215 and such other party as listed on the counsel slip, no one else appearing although duly served as evidenced from the affidavit of service of ● dated ●, 2023, filed:

**SERVICE**

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

**PARTIAL LIFT OF STAY**

2. **THIS COURT ORDERS** that the Stay be and is hereby lifted for the sole purpose of allowing the continuation of the action styled *2156776 Ontario Inc. cob D'Angelo Brands and The Regional Municipality of Peel* bearing Ontario Court file number CV20-00002978-0000, and the action styled *2156775 Ontario Inc. cob as D'Angelo Brands and The Regional Municipality of Peel and the City of Mississauga* bearing Ontario Court file number CV2100003036-0000 (collectively, the "**215 Actions**"), provided however that any judgment or order made in the 215 Actions against either of the Respondents shall remain subject to the Stay and the Receivership Order.

3. **THIS COURT ORDERS** that the Respondents shall not use or allow others to use any of its Property (as defined in the Receivership Order) to pay or secure payment of any Order made in the 215 Actions against one or both of the Respondents, including, but not limited to, any Order for costs or any Order for security for costs, without a further Order of the Court in the within proceeding.

**GENERAL**

4. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be added to the service list in each of the 215 Actions and shall be kept apprised of the status of the 215 Actions.

5. **THIS COURT ORDERS** that there will be no costs of this motion.

CANADIAN WESTERN BANK - and - 2722959 ONTARIO LTD. et al

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

**REPLY TO THE COST SUBMISSIONS  
SUBMITTED BY THE RECEIVER**

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Lawyers for the Respondent (Moving Party)  
2156775 Ontario Limited