

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

**PS HOLDINGS 1 LLC, PS HOLDINGS 2 LLC
and PS HOLDINGS 3 LLC**

Applicants

- and -

**2738283 ONTARIO INC., 2738284 ONTARIO INC.
and 2738285 ONTARIO INC.**

Respondents

**IN THE MATTER OF THE RECEIVERSHIP OF 2738283 ONTARIO INC.,
2738284 ONTARIO INC. and 2738285 ONTARIO INC.**

**AND IN THE MATTER OF AN 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*, RSO 1990, c C.43, as amended**

NOTICE OF MOTION

Morris Group Financial, Inc. (“**Morris Group**”), which is not a party to these proceedings, will make a motion to the court on **Thursday, March 10, 2022 at 10:00 a.m.**, or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- In writing under subrule 37.12.1 (1) because it is on consent, unopposed *or* made without notice;
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

at the following location: Toronto.

THE MOTION IS FOR:

- 1) An order lifting the prohibition against the commencement of new proceedings against the Debtors (as that term is defined below) as established by a receivership order granted by Justice Penny on November 9, 2021 (the “Receivership Order”), permitting Morris Group to make an application under section 43 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”), for an order adjudging the Debtors bankrupts and appointing a trustee in bankruptcy in respect of the Debtors’ consolidated estates (the “Proposed Bankruptcy Application”).
- 2) An order lifting the stay of proceedings imposed by the Receivership Order, permitting Morris Group to continue an action commenced by it against the Debtors on November 10, 2020 in the Ontario Superior Court of Justice and bearing Court File No. CV-20-00651075-0000 (the “Action”).
- 3) If necessary, an order abridging the time for service of this notice of motion and motion record and validating service thereof;
- 4) Costs of this motion on a substantial indemnity scale;
- 5) Such further relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) 2738283 Ontario Inc., 2738284 Ontario Inc. and 2738285 Ontario Inc. (the “Debtors”) are owned and operated by an individual named Blake Larsen.

- (b) Blake Larsen is the sole director, officer and controlling mind of the Debtors.
- (c) Morris Group commenced the Action on November 10, 2020. The Action is against:
 - i. the Debtors; and
 - ii. Blake Larsen personally, together with three other entities owned or operated by Blake Larsen (collectively, the “Larsen Defendants”).
- (d) The Action is in respect of unsecured debts owing by the Debtors and the Larsen defendants to Morris Group under a contract dated June 17, 2020.
- (e) On January 17, 2022, Morris Group learned of the Receivership Order.
- (f) Pursuant to the Receivership Order, MNP Ltd. (the “Receiver”) was appointed as receiver and authorized to, among other things, take possession of, take control over and sell the property of the Debtors for the benefit of the secured creditors, and specifically the real property owned by the Debtors and located at 664-674 Essa Rd. and 320-366 Mapleview Drive, Barrie, Ontario (the “Real Property”).
- (g) The Real Property is the only property of value owned by the Debtors.
- (h) Under the Receivership Order, no proceedings can be commenced or continued against the Debtors except with the written consent of the Receiver or with leave of the Court. To date, the Receiver has failed to provide such consent

- (i) The Receivership Order does not specifically authorize the Receiver to act as trustee in bankruptcy in respect of the Debtors' estates. To the contrary, the Receivership Order authorizes the Receiver to enter into agreements with "any trustee in bankruptcy appointed in respect of the Debtors". Thus the Receivership Order contemplates that a trustee-in-bankruptcy other than the Receiver may be appointed.
- (j) The sale of the Real Property will benefit the secured creditors; however, in the absence of an order appointing a trustee in bankruptcy for the Debtors, the remaining assets after the sale of the Real Property and the completion of the Receivership Order will be returned to the Debtors, to the detriment of all unsecured creditors, including Morris Group.
- (k) The Receiver cannot act as receiver for both the secured and the unsecured creditors of the Debtors. Such a situation would put the Receiver in a conflict.
- (l) The Debtors have committed an act of bankruptcy under section 43 of the BIA.
- (m) The Action was commenced one year prior to the Receivership Order and, but for the delays caused by the Debtors and the Larsen Defendants, the Action would have progressed significantly toward judgment. Particulars of these delays are as follows:
 - i. between November 2020 and January 2021, the Debtors and the Larsen Defendants evaded service of the statement of claim, forcing Morris Group to bring a motion for substituted service;

- ii. on April 21, 2021, a lawyer named John DaRe served counsel for Morris Group with a notice of intent to defend on behalf of the Debtors and the Larsen Defendants;
 - iii. on June 1, 2021, a law firm called Barriston LLP served counsel for Morris Group with a notice of change of lawyer on behalf of the Debtors and the Larsen Defendants;
 - iv. on June 16, 2021, Barriston LLP served counsel for Morris Group with a statement of defence on behalf of the Debtors and the Larsen Defendants;
 - v. between June 2021 and October 2021, counsel for Morris Group communicated regularly with Barriston LLP in an attempt to schedule discoveries in the Action;
 - vi. on October 21, 2021, prior to the successful scheduling of discoveries, Barriston LLP served counsel for Morris Group with a notice of motion, seeking to remove itself as counsel of record for the Debtors and the Larsen Defendants, with a return date of December 3, 2021;
 - vii. Barriston LLP failed to properly confirm the December 3, 2021 motion, resulting in the scheduling of a new return date of March 2, 2022.
- (n) Justice and equity demand that Morris Group be granted leave to:
- i. petition the Debtors into bankruptcy; and

- ii. continue prosecuting the Action.
- (o) *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, section 43.
- (p) Such further and other grounds as this Honourable Court deems just.

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

- (a) The affidavit of Parjot Benipal sworn March 1, 2022 and the exhibits thereto;
- (b) Such further and other material as counsel may advise and this Honourable Court may allow.

March 1, 2022

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TO: THE SERVICE LIST

PS HOLDINGS 1 LLC, PS HOLDINGS 2 LLC
and PS HOLDINGS 3 LLC

- and -

**2738283 ONTARIO INC., 2738284 ONTARIO INC.
and 2738285 ONTARIO INC.**

Applicants

Respondents

Court File No. CV-21-00670723-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**
Proceeding commenced at TORONTO

NOTICE OF MOTION

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