

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

2668438 ONTARIO INC.

Respondent

AIDE MEMOIRE

**APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT,
RSC 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, C.C.43**

1. The Applicant, The Toronto-Dominion Bank (the "**Bank**"), seeks to schedule an application date to hear its application to appoint a receiver. In the application the Bank seeks, *inter alia*, an order, appointing MNP Ltd. ("**MNP**"), without security, of all of the assets, undertakings and properties of the Respondent, 2668438 Ontario Inc. (the "**Debtor**"), acquired for, or used in relation to a business or businesses carried on by the Debtor.
2. The Debtor is a corporation incorporated pursuant to the laws of the Province of Ontario, with its head office located in Brampton, carrying on business as "Frontec Metal Fab".
3. As of May 19, 2023, the Debtor was indebted to the Bank in the amount of \$1,783,676.11, plus the costs of enforcement, including legal and professional costs, and interest, in respect of financing advanced to the Debtor (the "**Financing**").
4. The Bank received security for the Financing, including security over certain equipment.

5. The Debtor defaulted under the terms of the Financing as a result of unauthorized excesses and chargebacks on its accounts and missed payments. The Debtor denies any default under the Financing.
6. Bank did deliver a demand for payment and a Notice of Intention to Enforce Security to the Debtor, both dated May 19, 2023, pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the "**Demand**"). All statutory notice periods in relation to the Demand have expired and the obligations remain unpaid.
7. The Bank has been advised that the Debtor's principal, Michael Gonsalves, has had a stroke and is out of the country. The Debtor has advised that the Bank "Please do not contact me again. See you in Court".
8. The Debtor has failed to provide the Bank access to the equipment subject to its security or cooperate with the Bank in order for it to inspect same. The Bank's agent has been advised that certain and potentially all of the Debtor's equipment is now in Thunder Bay, Ontario.
9. MNP, as proposed Receiver, did attend the address the Bank has understood the Debtor operated from. MNP has reported that the Debtor is not operating from this premises and was advised by the owner of this property that the Debtor had left in November 2022 and did not pay rent for 3 months totaling approximately \$50,000.
10. The provisions of the Bank's security provide the Bank with the power to appoint a Receiver over all personal property of the Debtor as secured by the Bank's security.
11. It is the Bank's position that the appointment of a Receiver is just and equitable and is necessary for the protection of the estate of the Debtor, and the interests of the Bank, as a secured creditor, and other stakeholders.
12. The Bank proposes that MNP be appointed as Receiver, without security, over all personal property of the Debtor.
13. MNP has consented to act as Receiver should this Honourable Court so appoint it.
14. The Banks seeks to schedule its application urgently, no later than the end of July, as the whereabouts of the equipment subject to the Bank's security is unknown.

THE TORONTO-DOMINION BANK

v.

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Court File No. CV-23-00701809-00CL

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PROCEEDING COMMENCED AT TORONTO

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