

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE)
JUSTICE CONWAY)
MONDAY, THE 17TH
DAY OF JUNE, 2019

BETWEEN

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

SATIN FINISH HARDWOOD FLOORING, LIMITED

Respondent



APPLICATION UNDER section 101 of the *Courts of Justice Act*,
R.S.O. 1990, c. C.43, as amended

APPOINTMENT ORDER

THIS APPLICATION made by the Canadian Imperial Bank of Commerce (“CIBC”) for (i) an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (the “CJA”) appointing MNP Ltd. (“MNP”) as receiver (in such capacity, the “Receiver”) without security of the assets and property (the “Property”) of Satin Finish Hardwood Flooring, Limited (the “Debtor”) for the sole purpose of completing the sale transaction contemplated by an agreement of purchase and sale between the Debtor and 2340125 Ontario Inc. (the “Purchaser”) dated May 28, 2019 (the “Transaction”) previously approved by the Ontario Superior Court of Justice (in Bankruptcy and Insolvency) [Commercial List] pursuant to an Approval and Vesting Order dated 7 June 2019 and administering the Employee Trust Fund (defined below); and (ii) an Order vesting the Purchased Assets (as defined in the Sale Agreement) in the Purchaser was heard this day at 330 University Ave., Toronto, Ontario.

ON READING the Affidavit of Paul Montgomery sworn 17 June 2019 and the Pre-Appointment Report dated June 17, 2019 of MNP, the proposed Receiver (the “**Pre-Appointment Report**”), and on hearing the submissions of counsel for CIBC and MNP, and such other persons listed on the counsel slip,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record be and 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 that pursuant to section 101 of the CJA, MNP is hereby appointed as receiver of the Property and the Debtor, without security, for the sole purpose of completing the Transaction and administering the Employee Trust Fund pursuant to the applicable provisions of this Order.

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered, authorized and directed to:

- a. complete the Transaction;
- b. execute, sign, issue and endorse documents of whatever nature and take such other actions as are necessary for the purposes of completing the Transaction;
- c. administer the Employee Trust Fund in accordance with the applicable provisions of this Order;
- d. execute, sign, issue and endorse documents of whatever nature and take such other actions as are necessary for the purposes of administering the Employee Trust Fund and disbursing all the funds therein pursuant to the applicable provisions of this Order;

- e. 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 the Receiver's powers and duties, including without limitation those conferred by this Order;
- f. report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to its powers and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- g. enter into agreements with the trustee in bankruptcy appointed in respect of the Debtor; and
- h. 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 the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") 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 Employee Trust Fund and the obligations of the Debtor for which the Employee Trust Fund has been established, and 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 4 or in paragraph 5 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.

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

NO PROCEEDINGS AGAINST THE RECEIVER

6. **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 THE DEBTOR OR THE PROPERTY

7. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor, the Property or the Employee Trust Fund 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 the Debtor, the Property or the employee Trust Fund are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

8. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property or the Employee Trust Fund are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court.

RECEIVER TO HOLD AND ADMINISTER EMPLOYEE TRUST FUND

9. **THIS COURT ORDERS** that the amount of \$337,087.43 paid to the Receiver, as described in the Pre-Appointment Report, for the sole and express purposes of paying (a) the claims, as proved or admitted, described in section 81.4(1) and 81.6(1) of the BIA and (b) the wages, salaries, commissions or compensation, as proved or admitted, for services rendered by employees and former employees of the Debtor after January 2, 2019 and to and including June 14, 2019 (the "NOI Period") and disbursements of travelling salespersons properly incurred by

them in and about the Debtor's business during the NOI Period (collectively, the ~~"Purpose"~~ ^{"NOI Period Claims"}), *(such purposes collectively, the "purpose")* and any future amounts in excess of \$337,087.43 paid to the Receiver for the Purpose, shall be

held in trust by the Receiver separate and apart from other funds held by the Receiver, and the beneficiaries of such trust shall be (A) in the case of Purpose (a), the Persons with valid claims, as proved or admitted, who are entitled to security against the Debtor's current assets pursuant to section 81.4(1) of the BIA or against all the Debtor's assets pursuant to section 81.6(1) of the BIA and, in the case of Purpose (b), the Persons entitled to receive the payments, as proved or admitted, described in section 60(1.3)(a) of the BIA for services rendered and disbursements of travelling salespersons properly incurred during the NOI Period had the court approved a BIA Part III, Division I proposal in respect of the Debtor (the beneficiaries under (A) collectively, the "Employee Beneficiaries"), and (B) to the extent that monies in the Employee Trust Fund are not required for the Purpose, the Purchaser (subject to the interest of the Purchaser's secured creditors) and any other Person who after the date hereof pays monies to the Receiver for the Purpose (collectively, the "Contributing Parties"), *pro rata* based on the respective payments of such Persons (such trust, the "Employee Trust Fund"). The payment by the Contributing Parties of the amount of \$337,087.43 or any future amounts into the Employee Benefit Trust shall be on a "without prejudice" basis and shall not be or deemed to be an admission by any of

them of the validity of any of the claims of the Employee Beneficiaries. *Nothing in this Order shall prejudice the rights of the Employee Beneficiaries to assert that the priority pursuant to section 60(1.3)(a) for NOI Period Claims continues to apply against the Employee Trust Fund.*

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10. **THIS COURT ORDERS** that the Receiver shall no later than 5:00 p.m. (Toronto time) on July 5, 2019 provide written notice of the Employee Trust Fund and the procedures with respect to proving claims thereto established under this Order and as provided in the BIA, together with a notice to prove claims against the Trust Fund to (a) in the case of Employee Beneficiaries who are or were members of Teamsters Local Union 847 (the "Local"), to the Local only and notice to the members themselves of the Local or any other Persons is hereby dispensed with, (b) in the case of Employee Beneficiaries who are not or were not members of the Local, to the Persons who are the Employee Beneficiaries at their last known addresses appearing in the records of the Debtor, and (b) to such other Persons who the Receiver considers ought to receive notice.

11. **THIS COURT ORDERS** that Employee Beneficiaries, or other persons with authority under section 126(2) of the BIA, who wish to assert claims against the Employee Trust Fund, shall do so no later than 5:00 p.m. (Toronto time) on August 2, 2019 and in accordance with such section 126(2) and other applicable provisions of the BIA and use such forms and procedures as are prescribed by the BIA, failing which the claims against the Employee Trust Fund of the non-complying Employee Beneficiaries shall be forever barred and extinguished.

12. **THIS COURT ORDERS** that the Receiver shall consult with the Contributing Parties and the Purchaser's secured creditors in connection with its consideration of and determination of all claims filed against the Employee Trust Fund, provided that the Receiver itself shall make the final determinations on the treatment of all claims filed, subject to review by this Court pursuant to the provisions of this Order or under the applicable provisions of the BIA.

13. **THIS COURT ORDERS** that the Contributing Parties and the Purchaser's secured creditors shall have standing to participate by their counsel in any and all proceedings taken pursuant to the provisions of this Order or the applicable provisions of the BIA in respect of the Employee Trust Fund or the claims filed against the Employee Trust Fund.

EMPLOYEES

14. **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, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that the Receiver shall not occupy or take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property, and 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 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.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **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, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, and 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.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its 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 in Toronto.

SERVICE AND NOTICE

19. **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. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <<https://mnpdebt.ca/en/corporate/engagements/satin-finish-flooring-limited>>

20. **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 the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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

21. **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, including those in respect of the Employee Trust Fund.

22. **THIS COURT ORDERS** that the Contributing Parties may from time to time apply to this Court for a determination of any matter relating to the Employee Trust Fund 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.

23. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

24. **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.



ENTERED AT / INSCRIT À TORONTO
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JUN 17 2019

PER / PAR: 

BETWEEN:

Canadian Imperial Bank of Commerce
Applicant

- and -

Satin Finish Hardwood Flooring, Limited
Respondent

Court File No.: 4V-19-622048-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

APPOINTMENT ORDER

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