



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
ONE LONDON PLACE
255 QUEENS AVENUE, SUITE 2010
LONDON, ON N6A 5R8
CANADA

T 519.931.3500
F 519.858.8511

MILLERTHOMSON.COM

July 26, 2019

Sent via E-mail or Regular Mail

TO THE ATTACHED SERVICE LIST

Dear Sirs/Mesdames:

Sherry A. Kettle
Direct Line: 519.931.3534
skettle@millerthomson.com

File: 0223176.0004


Re: The Toronto-Dominion Bank v. Tomlin Industries (2000) Inc. et al.

Attached is the Order of Madam Justice Mitchell dated July 26, 2019, as issued and entered, which is hereby served pursuant to the *Rules of Civil Procedure*.

Yours truly,

MILLER THOMSON LLP

Per:


Sherry A. Kettle
SAK/sj
Encl.

SERVICE LIST

TO: Harrison Pensa LLP
Barristers and Solicitors
451 Talbot Street
London, ON N6A 5J6

Timothy C. Hogan
Tel: 519.661.6743
Fax: 519.667.3362
Email: thogan@harrisonpensa.com

Lawyers for the Plaintiff, The Toronto-Dominion Bank

AND TO: Kaufman LLP
800 Rene-Levesque Blvd.
West Montreal (Quebec) H3B 1X9

Michael Schacter
Tel: (514) 871-5323
Fax: (514) 875-7147
Email: mshchacter@klcanada.com

Martin Jutras
Tel: (514) 871-5320
Fax: (514) 875-7147
Email: mjutras@klcanada.com

Lawyers for the Plaintiff (Quebec)

AND TO: McMillan LLP
World Exchange Plaza
Suite 2000
45 O'Connor Street
Ottawa, ON K1P 1A4

Patrick Murray
Tel: (613) 691-6118
Fax: (613) 231-3191
Email: patrick.murray@mcmillan.ca

Lawyers for the Defendants

AND TO: Langlois Avocats/Lawyers
1250 Rene-Levesque Blvd. West



20th Floor
Montreal (Quebec) H3B 4W8

Gerry Apostolatos
Tel: (514) 282-7831
Fax: (514) 845-6573
Email: gerry.apostolatos@langlois.ca

Félix Bernard
Email: felix.bernard@langlois.ca

Lawyers for Zitta Immobilier Inc., and Les Produits Zitta Inc./Zitta Products Inc.

AND TO: Her Majesty the Queen in Right of Ontario as represented by Ministry of
Finance Legal Services Branch
33 King Street West, 61h Floor
Oshawa, ON L1H 8H5

Kevin O'Hara
Senior Counsel, Ministry of Finance
Tel: (905) 433-6934
Fax: (905) 436-4510
Email: kevin.ohara@fin.gov.on.ca

AND TO: Canada Revenue Agency
c/o Department of Justice Ontario Regional Office
The Exchange Tower
Box 36
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

Rakhee Bhandari
Tel: 416-952-8563
Email: Rakhee.Bhandari@justice.gc.ca

AND TO: Business Development Bank of Canada
1200-121 King Street
Toronto, ON M5H 3T9

Ruth Thomson
Tel: (416) 952-8690
Fax: (416) 973-8283
Email: ruth.thomson@bdc.ca



AND TO: Canada Revenue Agency
c/o Quebec Insolvency Intake Center
Shawinigan-Sud National Verification and Collection Center
4695 Shawinigan-Sud Blvd
Shawinigan-Sud (Quebec) G9P 5H9

Fax: (800) 567-9325

AND TO: Royal Bank of Canada
10 York Mills Road
Toronto, ON M2P OA2

AND TO: Bank of Nova Scotia – OLAC
44 King Street W
Scotia Plaza
Toronto, ON M5H 181

AND TO: Canadian Dealer Lease Services Inc.
372 Bay Street, Suite 1800
Toronto, ON M5H 2W9

AND TO: FNS Corporation Ltd.
208 Donnelly Drive
Mississauga, ON L5G 2M4

AND TO: Melanie Anne Shewchuk
208 Donnelly Drive
Mississauga, ON L5G 2M4

AND TO: Jean-Louis Cloutier
208 Donnelly Drive
Mississauga, ON L5G 2M4

AND TO: 1048167 Ontario Limited
285 Weber Street North
Waterloo, ON N2J 3H8

AND TO: 1266267 Ontario Ltd.
452 Drake Circle
Waterloo, ON N2T 1L1



AND TO: John A. Weir
452 Drake Circle
Waterloo, ON N2T 1L1

AND TO: Jacksco Ltd.
452 Drake Circle
Waterloo, ON N2T 1L1

AND TO: Agence du revenu du Quebec
3e etage, secteur R23CPF
1600, boul. Rene-Levesque Ouest
Montreal (Quebec) H3H 2V2

Fax : (514) 285-3833

AND TO: Registre des droits personnels et reels mobiliers
1, rue Notre-Dame Est, bureau 7.07
Montreal (Quebec) H2Y 186

Fax : (514) 864-4867

AND TO: Quebec Land Registry
Registration Division of Arthabaska
62, rue St-Jean-Baptiste, RC
Victoriaville (Quebec) G6P 4E3

Fax : (819) 357-1272

AND TO: Caisse Desjardins de l'Erable
1656 St-Calixte Street, C.P.187
Plessisville (Quebec) G6L 2Y7

Paul Gagné
Tel : (819) 362-3236
Fax : (819) 362-8751





Court File No.: 35-2214905T

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE **MADAM**

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FRIDAY, THE 26TH

JUSTICE **MITCHELL**

DAY OF JULY, 2019

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**TOMLIN INDUSTRIES (2000) INC., CAML NORTH AMERICA LTD.,
7949952 CANADA INC. and 7949987 CANADA INC.**

Defendants

DISCHARGE ORDER

THIS MOTION, made by MNP Ltd. ("**MNP**"), in its capacity as Court-appointed Receiver (the "**Receiver**") of certain of the assets, undertakings and properties of Tomlin Industries (2000) Inc., CAML North America Ltd., 7949952 Canada Inc. and 7949987 Canada Inc. (collectively the "**Debtors**") for an order:

- (a) if necessary, abridging or waiving the time for service and filing, dispensing with service, or validating the method of service of the Notice of Motion, the Motion Record, the motion confirmation form(s) and the First Report of the Receiver dated July 11, 2019 and all appendices thereto (the "**First Report**"), and all supplementary motion materials, if any, and directing that any further service of same be dispensed with such that this motion is properly returnable on July 26, 2019;
- (b) approving the First Report and the activities and actions of the Receiver described therein;
- (c) approving the Receiver's Interim Statement of Receipts and Disbursements for the period from March 12, 2019 through June 30, 2019 (the "**Interim R&D**");

ORDER ENTERED

JUL 26 2019

- (d) approving the professional fees and disbursements of the Receiver and its counsel, Miller Thomson LLP ("**Miller Thomson**") and Kaufman LLP, including approval of the estimate of additional fees and disbursements required in connection with the receivership proceeding without further Court approval (collectively, the "**Professional Fees**");
- (e) authorizing Zitta Immobilier Inc. and Les Produits Zitta Inc./Zitta Products Inc. (collectively, the "**Purchasers**") and the Receiver to directly remit all future Business Receivable collections, as described in the First Report (the "**Business Receivable Collections**"), to the Toronto-Dominion Bank ("**TD Bank**");
- (f) approving and directing the Receiver to distribute the balance of funds held by the Receiver as follows:
 - (i) firstly, to pay Business Development Bank of Canada ("**BDC**");
 - (ii) secondly, to pay the unpaid Professional Fees; and
 - (iii) thirdly, to pay TD Bank;
- (g) approving the discharge of MNP as Receiver;
- (h) releasing the Receiver from any and all liability, save and except for any gross negligence or wilful misconduct on the Receiver's part, upon the filing of a certificate with the Court confirming that the administration by the Receiver of its duties pursuant to the Appointment Order of Mr. Justice Aston dated March 12, 2019 (the "**Appointment Order**") have been completed; and
- (i) such further and other relief as counsel may advise and this Honourable Court may deem just,

was heard this day at the Courthouse, 80 Dundas Street, London, Ontario.

ON READING the First Report, the Fees Affidavit of Jerry Henechowicz sworn July 5, 2019 and the exhibits thereto (the "**Receiver's Fee Affidavit**"), the Fee Affidavit of Tony Van Klink sworn July 11, 2019 and the exhibits thereto and the Fee Affidavit of Michael Schacter sworn July 11, 2019 (collectively, the "**Legal Counsel Fee Affidavits**" and together with the Receiver's Fee Affidavit, the "**Fee Affidavits**") and on hearing the submissions of counsel for

the Receiver, no one else appearing although properly served as evidenced by the Affidavit of Susan Jarrell sworn July 15, 2019, filed;

1. THIS COURT ORDERS that the time for and method of service of motion confirmation forms, the Motion Record, including the Notice of Motion and the First Report, and all supplementary motion materials, if any, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the First Report and the activities and actions of the Receiver described therein are hereby approved.
3. THIS COURT ORDERS that the Interim R&D be and is hereby approved.
4. THIS COURT ORDERS that the Professional Fees, as set out in the First Report and the Fee Affidavits, be and are hereby approved, and the estimates of additional fees and disbursements of the Receiver and Miller Thomson to complete the Receiver's administration of the estate of the Debtors are hereby approved and the Receiver is authorized to pay same without further Court approval.
5. THIS COURT ORDERS that the Purchasers and the Receiver are authorized to directly remit all future Business Receivable Collections to TD Bank.
6. THIS COURT ORDERS that the Receiver shall distribute the balance of funds held by the Receiver as follows:
 - (a) firstly, to pay BDC;
 - (b) secondly, to pay the unpaid Professional Fees; and
 - (c) thirdly, to pay TD Bank.
7. THIS COURT ORDERS that upon payment of the amounts set out in paragraphs 4 and 6 hereof, the Receiver shall be discharged as Receiver of the assets, undertakings and properties of the Debtors as set out in the Appointment Order, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of MNP in its capacity as Receiver.

8. THIS COURT ORDERS AND DECLARES that MNP is hereby released and discharged from any and all liability that MNP now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of MNP while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, MNP is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.


Justice, Superior Court of Justice

The Toronto-Dominion Bank
Plaintiff and Tomlin Industries (2000) Inc., et al.
Defendants

Court File No.: 35-2214905T

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

Proceeding commenced at London

DISCHARGE ORDER

MILLER THOMSON LLP
One London Place
255 Queens Avenue, Suite 2010
London, ON Canada N6A 5R8

Tony Van Klink LSO#: 29008M
tvanklink@millerthomson.com
Tel: 519.931.3509
Fax: 519.858.8511

Sherry A. Kettle LSO#: 53561B
skettle@millerthomson.com
Tel: 519.931.3534
Fax: 519.858.8511

Lawyers for MNP Ltd., Court-appointed Receiver of
Tomlin Industries (2000) Inc., Caml North America
Ltd., 7949952 Canada Inc. o/a Acryline, and 7949987
Canada Inc.