

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 19TH DAY
JUSTICE HAINEY) OF JULY, 2019



BETWEEN:

BANK OF MONTREAL

Applicant

– and –

2380630 ONTARIO INC. and 2386174 ONTARIO INCORPORATED

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO 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*,
R.S.O. 1990, c. C.43, AS AMENDED

**APPROVAL, VESTING
AND DISCHARGE ORDER**

THIS MOTION, made by **ALBERT GELMAN INC.**, in its capacity as the Court-appointed receiver (the "**Receiver**") without security, over all of the assets, undertakings and properties (the "**Property**") of 2380630 Ontario Inc. ("**OpCo**") and 2386174 Ontario Incorporated ("**LandCo**") (together, the "**Debtors**"), for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale, as amended (the "**Sale Agreement**") between the Receiver and Sharmila Mahalingasivam (the "**Purchaser**") appended to the Confidential Report of the Receiver dated July 16, 2019 (the "**Confidential Report**"), and vesting in the Purchaser the

Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), and for an order:

1. approving the activities of the Receiver as set out in the Confidential Report and the report of the Receiver dated July 16, 2019 (the "**Second Report**");
2. approving the fees and disbursements of the Receiver and its counsel;
3. approving the distribution of the remaining proceeds available in the estate of the Debtors;
4. discharging the Receiver as Receiver of the undertaking, property and assets of the Debtors; and
5. releasing the Receiver from any and all liability, as set out in paragraphs 12-14 of this Order,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and the Confidential Report and on hearing the submissions of counsel for the Receiver and the Debtors, no one appearing for any other person on the service list, although properly served, as appears from the affidavit of Marie Pacheco sworn July 16, 2019, filed:

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the Notice of Motion and Motion Record hereby is abridged is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional

steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser or as he/she may direct, free and clear of and from any and all claim, demand, hypothecation, pledge, lien, charge, security agreement, security interest, lease, sublease, title retention agreement, mortgage, encumbrance, execution, easement, right-of-way, restrictive covenant, restriction, encroachment, option or adverse claim of any kind or character whatsoever, or similar interests or instruments charging or creating a security interest in, or against title to, such Purchased Assets, whether created by agreement, statute or otherwise at law, attaching to the property, assets or rights whether registered or unregistered, trusts or deemed trusts (whether contractual, statutory, or otherwise), levies, or other financial or monetary claim and encumbrance of any nature and kinds whatsoever, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated July 3, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), ("**PPSA**") or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") but for greater certainty the Encumbrances vested out herein shall not include (i) any and all tax refunds from any government authority, accounts receivable of the Debtors or any one of them, rent arrears, insurance proceeds, if any, litigation claims of the Debtors, if any, but does not include prepaid rental deposits, and any matters listed in the Permitted Encumbrances including any security interests of creditors perfected by a *Personal Property Security Act* (Ontario) registration (the "**Excluded Assets**") and (ii) the permitted encumbrances listed on Schedule D hereto (the "**Permitted Encumbrances**") and, for greater

certainty, this Court orders that, save and except as it relates to the Excluded Assets and the Permitted Encumbrances, all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets on the Completion Date.

4. **THIS COURT ORDERS** that the Confidential Report be sealed until such time as the Receiver has delivered the Receiver's Certificate to the Purchaser.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Peterborough (LRO #45) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser, or as he/she may direct, as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors,

or either of them, and any bankruptcy order issued pursuant to any such applications; and

- (c) any assignment in bankruptcy made in respect of the Debtors, or either of them;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors, or either of them, and shall not be void or voidable by creditors of the Debtors, or either of them, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

DISCHARGE OF THE RECEIVER

9. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Second Report and the Confidential Report, are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the Second Report and the Affidavits of Joseph Albert, Mindy Tayar and Joseph Fried, are hereby approved.

11. **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to the Canada Revenue Agency, in the amount of its deemed trust claims against the Debtors, with the balance to be paid to the Bank of Montreal, the Debtors' senior secured creditor, up to the amount of the secured obligations owing to the Bank of Montreal.

12. **THIS COURT ORDERS** that the Receiver is hereby released and discharged from any and all interest or liability it now has, or may hereafter have, by reason of, or in any way arising out of, the Debtors' interest in the vehicles listed on Schedule C hereto.

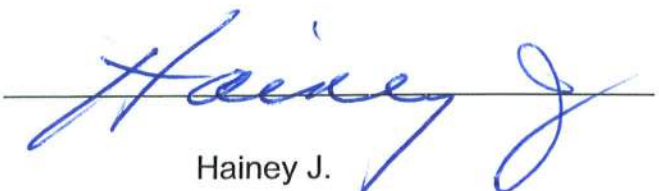
13. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraph 11 hereof and upon the Receiver filing the Receiver's certificate described herein, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtors, provided however that notwithstanding 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 Albert Gelman Inc. in its capacity as Receiver.

14. **THIS COURT ORDERS AND DECLARES** that Albert Gelman Inc. is hereby released and discharged from any and all liability that Albert Gelman Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Albert Gelman Inc. 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, Albert Gelman Inc. 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.

15. **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 A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 19 2019


Hailey J.

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-18-599726-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

BANK OF MONTREAL

Applicant

– and –

2380630 ONTARIO INC. and 2386174 ONTARIO INCORPORATED

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the "Court") dated July 3, 2018, [Albert Gelman Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of 2380630 Ontario Inc. and 2386174 Ontario Incorporated (the "Debtors").

B. Pursuant to an Order of the Court dated July 19, 2019, the Court approved the agreement of purchase and sale (the "Sale Agreement") between the Receiver and Sharmila Mahalingasivam (the "Purchaser") and provided for the vesting in the

Purchaser, or as he/she may direct, of the Debtors's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section • of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section • of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**ALBERT GELMAN INC., solely in its
capacity as the Court-Appointed
Receiver of 2380630 Ontario Inc. and
2386174 Ontario Incorporated and not in
its Personal Capacity**

Per: _____

Joe Albert, CPA, DIFA, LIT

Schedule B – Purchased Assets

All of the assets, undertakings and properties of the Debtors that has come into the Receiver's possession, including the below-listed assets but excludes the Excluded Assets and Permitted Encumbrances:

1. The right, title and interest of the Debtors in the real properties described as: (i) PIN 28391-0310 Pt S ½ LT 25 CON 12 (SMITH) being PT 2 45R13947; TWP of SELWYN (ii) PIN 28391-0182 PT S 1/2 LT 25 CON 12 SMITH, PT 1, 45R13947; TOWNSHIP OF SELWYN; and (iii) PIN 28391-0326 PT S 1/2 LT 25 CON 12(SMITH), BEING PT 1 PL 45R15651; TOWNSHIP OF SELWYN
2. The right title and interest of the Debtors in the chattels and equipment (if any) owned by the Debtors and situate at, and used or were used in the operation of the Property and/or the closed gas bar; and
3. all subsisting offers to lease, agreements to lease, leases, subleases, renewals of leases, and other rights or licenses granted to possess or occupy space within the Property now or hereafter, together with all security, guarantees and indemnities of the tenants', subtenants' and licensees' obligations thereunder, in each case as amended, renewed or otherwise varied to the date hereof, and including the Lease dated September 2, 2016 between 9618732 Canada Inc., o/a Morris Chemicals as tenant and 2386174 Ontario Inc. as landlord, and the residential tenancy at the Property.

Schedule C – Claims to be deleted and expunged from title to Real Property

PINs 28391-0310 (LT), 28391-0326 (LT), 28391-0182 (LT)

Instrument No.	Date	Instrument Type	Parties From	Parties To
PE199382	2013/12/16	CHARGE	2386174 ONTARIO INCORPORATED	BANK OF MONTREAL
PE199385	2013/12/16	NOTICE ASSIGNMENT OF RENTS GENERAL	2386174 ONTARIO INCORPORATED	BANK OF MONTREAL
PE282120	2017/12/05	CHARGE	2386174 ONTARIO INCORPORATED	2568985 ONTARIO INC.

PPSA Registrations to be expunged:

1. PPSA File No. 692356626 in favour of Bank of Montreal securing inventory, equipment, accounts, motor vehicles and other collaterals of LandCo and OpCo.
2. PPSA File No. 733846509 in favour of Bank of Montreal securing inventory, equipment, accounts, motor vehicles and other collaterals of LandCo.
3. PPSA File No. 733846491 in favour of Bank of Montreal securing inventory, equipment, accounts, motor vehicles and other collaterals of OpCo.
4. PPSA File No. 740762514 in favour of Nissan Canada Financial Services Inc. securing equipment and other collateral of OpCo, including a 2018 Nissan Sentra with Vehicle Identification No. 3N1AB7APXJY262220;
5. PPSA File No. 740762568 in favour of Nissan Canada Financial Services Inc. securing equipment and other collateral of OpCo, including a 2018 Nissan Sentra with Vehicle Identification No. 3N1AB7AP2JY279092;
6. PPSA File No. 740986893 in favour of Ford Credit Canada Company securing equipment and other collateral of OpCo, including a 2018 Ford Escape with Vehicle Identification No. 1FMCU9GD4JUB77137;

7. PPSA File No. 740986902 in favour of Ford Credit Canada Company securing equipment and other collateral of OpCo, including a 2018 Ford Escape with Vehicle Identification No. 1FMCU9GD3JUB00422;
8. PPSA File No. 743849928 in favour of Nissan Canada Financial Services Inc. securing equipment and other collateral of OpCo, including a 2018 Nissan Rogue with Vehicle Identification No. 5N1AT2MT1JC823799; and
9. PPSA File No. 743850612 in favour of Nissan Canada Financial Services Inc. securing equipment and other collateral of OpCo, including a 2018 Nissan Rogue with Vehicle Identification No. 5N1AT2MT8JC833455.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Instrument # R164048 is a by-law Registered on September 21, 1966;
2. Reference Plan 45R13947 Registered on December 5, 2006;
3. Reference Plan 45R14995 Registered on May 31, 2010;
4. Reference Plan 45R15651 Registered on May 17, 2013;
5. Instrument # PE211660 is a Notice of an Agreement with the Corporation of the Township of Selwyn Registered on September 3 2014;
6. Instrument # PE292663 is an Application to register Court Order Registered on July 4, 2018

Court File No.: CV-18-599726-00CL

BANK OF MONTREAL

v. 2380630 ONTARIO INC., et al.

Applicant

Respondents

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COMMERCIAL LIST**

Proceeding Commenced at Toronto

ORDER

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