

THE QUEEN'S BENCH

WINNIPEG CENTRE

IN THE MATTER OF: The Appointment of an Interim Receiver  
pursuant to section 47 of the *Bankruptcy  
and Insolvency Act* R.S.C. c. B-3, as  
amended (the "BIA")

BETWEEN:

BANK OF MONTREAL

Applicants,

- and -

8000140 CANADA LTD. carrying on business  
as SERVPRO WINNIPEG

Respondent

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**AFFIDAVIT OF RICK DONALD**

**Sworn: November 6, 2017**

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IN THE MATTER OF: The Appointment of an Interim Receiver pursuant to section 47 of the *Bankruptcy and Insolvency Act* R.S.C. c. B-3, as amended (the "BIA")

BETWEEN:

BANK OF MONTREAL

Plaintiff

- and -

8000140 CANADA LTD. carrying on business as  
SERVPRO WINNIPEG

Defendant

**AFFIDAVIT OF RICK DONALD**  
**SWORN: NOVEMBER 6, 2017**

I, Rick Donald, of Winnipeg, in the Province of Manitoba, banker, MAKE OATH AND SAY AS FOLLOWS:

1. I am an Account Manager, Special Accounts Management Unit, with the Applicant, Bank of Montreal ("**BMO**"), and have carriage of BMO's file concerning the indebtedness owed to BMO by the Respondent,

8000140 Canada Ltd. (the “**Debtor**”), and as such have personal knowledge of the matters and facts herein deposed to, except where otherwise stated, and where so stated, I do verily believe the same to be true.

2. 81000140 Canada Ltd. (the “**Debtor**”) is a Federal corporation that operates in the Province of Manitoba under the business name “Servpro Winnipeg”. True copies of corporate searches with the Federal corporate registry and the Manitoba Companies Office concerning the Debtor dated October 31<sup>st</sup>, 2017 are attached to this Affidavit as **Exhibit “A”**.

### **Financing Advanced to the Debtors by BMO**

3. Over the course of several years, BMO entered into a loan agreements with the Debtor to make a demand operating credit facility available to the Debtor, as follows:
  - (a) Demand operating credit facility, Loan Account No. 0003-1986-212 (the “**Operating Line**”), advanced pursuant to an Operating Loan Agreement dated December 16, 2013. A true copy of the Operating Loan Agreement is attached to this Affidavit as **Exhibit “B”**. The Operating Loan Agreement was amended by an Amendment Agreement dated August 29, 2016 whereby the loan limit was increased to the current limit of \$900,000. A true copy of the Amendment Agreement is attached to this Affidavit as **Exhibit “C”**.
4. The Operating Line is a demand loan facility in respect of which the Bank is entitled to demand payment in full at any time. The purpose

of the Operating Line was to assist with the Debtor's cash flow and operating requirements.

5. In order to secure the repayment by the Debtor to BMO of the Operating Line, the Debtor granted to BMO the following security:
  - (a) Manitoba Personal Property Security Act Security Agreement dated December 16, 2013 granting security over all of all present and future equipment, inventory, receivables, intangibles, proceeds, and undertakings, a true copy of which is attached as **Exhibit "D"** to this Affidavit (the "**GSA**").
  - (b) General Assignment of Debts dated December 16, 2013 granting security over all accounts, debts, and other intangibles, chattel paper, documents of title, instruments, securities, and security interests, a true copy which is attached as **Exhibit "E"** to this Affidavit.
6. BMO registered financing statements at the Manitoba Personal Property Registry ("**PPR**") claiming security interests over all of the Debtor's present and future personal property of the Debtor on December 10, 2013.
7. Attached as **Exhibit "F"** is a true copy of a PPR Search Result in respect of the Debtor dated October 25, 2017.
8. On February 14, 2012, ServPro International, LLC (the "**Franchisor**"), which had entered into a franchise license agreement as franchisor, with the Debtor as operator, registered a financing statement at PPR in respect of the Debtor, claiming a security interest in all undertaking, property and assets of the Debtor.

9. The Bank, the Franchisor and the Debtor entered into a Priorities Agreement dated February 10, 2014 (the “**Franchisor Priority Agreement**”), pursuant to which the Franchisor agreed to subordinate its security and priority to that of the Bank in respect of Accounts Receivable and Equipment, as those terms are defined in the Franchisor Priority Agreement. A true copy of the Franchisor Priority Agreement is attached as **Exhibit “G”**.
10. On February 17, 2012, Business Development Bank of Canada (“**BDC**”) registered a financing statement at PPR in respect of the Debtor, claiming a security interest in all of the Debtor’s present and after-acquired personal property.
11. The Bank, the BDC and the Debtor entered into a Priorities Agreement dated January 10, 2014 (the “**BDC Priority Agreement**”), pursuant to which BDC agreed to subordinate its security and priority to that of the Bank in respect of Accounts Receivable and Inventory, as those terms are defined in the Franchisor Priority Agreement. A true copy of the Franchisor Priority Agreement is attached as **Exhibit “H”**.
12. As a result of the order of registrations at PPR, the Franchisor Priority Agreement and the BDC Priority Agreement, the Bank takes the position that it has the first ranking priority in respect of all of the Company’s accounts receivable. Such accounts receivable represent the principal collateral held by the Bank in respect of the Operating Line.
13. The Debtor is indebted to BMO in respect of the Operating Line in the following amounts, as at October 31<sup>st</sup>, 2017:

Principal	\$891,877.03
Interest	\$3,615.81
Other Charges	<u>\$220.00</u>
<b>Total</b>	<b>\$895,712.84</b>

14. Interest on the Operating Line is accruing at the Bank's current prime rate of interest plus 1.7500%.
15. To further secure the obligations of the Debtor, the Bank took personal guarantees from Todd Balcain and Kristen Balcain, to a limit of \$900,000.00. A true copy of the Guarantee for Indebtedness of an Incorporated Company dated December 16, 2013 and a true copy of the Guarantee for Indebtedness of an Incorporated Company dated August 26, 2016 is attached to this Affidavit as **Exhibit "I"**.

#### **Other Creditors of the Debtor**

16. The other main creditor of the Debtor of which I am aware is BDC.
17. In the case of BDC, on October 18, 2017, I became aware from a conversation with a BDC account manager, Aleta Atengco, that BDC had demanded payment of the Debtor's loans with it, as a result of the Debtor being in arrears of its payment obligations to BDC. Through the Bank's solicitor, David Gerecke, who was provided with such documentation by BDC's solicitor, Catherine Howden, I have obtained a copy of BDC's demand dated September 19, 2017, that was served upon the Debtor (the "**BDC Demand**"). A true copy of the BDC Demand is attached to this Affidavit as **Exhibit "J"**. The amount demanded by BDC was \$233,204.74 plus interest and costs.

18. Subsequently, on October 23, 2017, BDC caused a Statement of Claim (the "**BDC Claim**") to be issued in Court File No. 17-01-10892, naming the Debtor as a defendant among others. For the Court's convenience, a true copy of the BDC Claim is attached as **Exhibit "K"**.
19. On November 2, 2017, Catherine Howden emailed David Gerecke to provide the BDC Demand and the BDC Claim. A true copy of her email is attached as **Exhibit "L"**. In that email she advised that "To date, the full amount remains outstanding."
20. I do not know whether the Debtor is significantly indebted to the Franchisor or any trade creditors.

### **Debtor's Business Operations**

21. The Debtor is a special trade contracting company involved in restoration projects. It has operated under the business name Servpro Winnipeg.
22. The sole director and principal of the Debtor is Todd Balcain. The Debtor has substantial accounts receivable owed to it from restoration projects carried out by it. The collectability of those accounts receivable is critical to the Debtor's ability to repay the Bank or, if the Debtor does not repay the Bank, the Bank's ability to recover the amounts owing to it. Many of the accounts receivable owed to the Debtor are owed by insurance companies, who are insurers of property owners whose properties were damaged (such as by water entry).

23. My understanding of the process is that once a job is complete, Todd Balcain certifies that to the insurer and causes an invoice to be rendered. Without that certification, my understanding is that invoices would not be paid. To my knowledge, no one other than Todd Balcain is able to provide such certification on behalf of the Debtor.

### **Attempts to Contact and Meet with Todd Balcain and Gather Information**

24. Prior to my involvement, Derek Schroeder, a Commercial Account Manager with the Bank, was managing the Bank's relationship with the Debtor. Mr. Schroeder had been having difficulty getting financial information from the Debtor. As well, he had been unable to make contact with Todd Balcain, even though he had made several attempts to visit the Debtor's premises and Mr. Balcain's home. I had been advising Mr. Schroeder through that process, but when he was unable to make contact the determination was made that the account needed to be transferred to me for handling by the Bank's Special Accounts Management Unit (SAMU). As an account manager in SAMU, I am tasked with dealing with distressed accounts at the Bank.
25. The process of transferring the file to me was started on October 10, 2017. Even though I did not have the physical file, I started working on the file as quickly as possible as it was clear that significant urgency existed.
26. At the time that I took over the account, the Debtor was not in default of making payments, although the Operating Line was generally close to its limit of \$900,000.00. The Debtor's bi-weekly payroll generally



averages around \$7,000.00 to \$8,000.00, and those cheques are drawn on the Operating Line so it is a matter of concern with the Operating Line is extremely close to its limit.

27. On October 16, 2017, I attempted to call Todd Balcain on his mobile phone, and left a voicemail. I attempted to call him at the office and was told that he was not in. I spoke with the Debtor's bookkeeper, Sarah Wojnarski ("**Sarah**") and advised her that I wished to meet with her and Todd to discuss the account. I also contacted Kristen Balcain ("**Kristen**"). Kristen had previously been an officer of the Debtor. She was Todd Balcain's wife but advised me that they had separated. She told me that she would attempt to contact Todd Balcain and advise him to contact me. I advised both Sarah and Kristen that I wished to visit the Debtor's office on Thursday (October 18) and asked them to communicate that to Todd Balcain. Also on October 16, I emailed Mr. Balcain at approximately 2:40 p.m. to advise that I needed to meet with him and wished to meet on Thursday. A true copy of that email thread is attached as **Exhibit "M"**.
28. On October 17, 2017, I again called the Debtor's office to speak with Todd Balcain and was advised that he was not in the office and had not called in. I spoke with Sarah. I also spoke with Kristen who advised me that she had spoken with Todd Balcain, who indicated that he would call me. He did not call me, although I tried to call his mobile phone twice that day.
29. On October 18, 2017, I exchanged emails with Kristen. She advised that she had passed along my information to Todd that morning and

that he had said he would be in touch that day. A true copy of that email thread is attached as **Exhibit "N"**. Todd Balcain called me from his mobile phone on October 18. He was upset that I had spoken with Kristen and advised that he did not want me talking to her. We agreed to meet at the Debtor's office on October 19, 2017 at 1:30 p.m. He told me that his health was poor and described a state of physical paralysis. He said that he slept a lot and was unable to get to the office on a regular basis at this time. However, he sounded positive about getting to a resolution and seemed open to discussion.

30. On Thursday October 19, 2017, I attended at the Debtor's premises at 83 Kate St., Winnipeg. at 1:30 p.m. Todd Balcain was not present. I did speak with a couple of staff members, including Sarah. I was advised by one staff member that Mr. Balcain had texted to advise that he wanted to reschedule the visit to the following day. After returning to my office, I sent Mr. Balcain an email asking what had happened. A true copy of that email is attached as **Exhibit "O"**. I also called his mobile phone but his voicemail box was full. While I attempt to avoid texting on business matters, I also sent a text to him on October 19 to attempt to re-schedule the meeting he had missed.
31. On October 20, 2017 at 9 a.m., I spoke with the Debtor's accountant, Jim Montgomery. He advised me that no information had been provided to him for preparation of the August 2017 year-end financial statements. He advised that he had been unable to make contact with Todd Balcain. Other things he told me, such as that issues existed with remittances to CRA existed, heightened my concerns. He advised that he had no current accounts payable lists to provide

to me. Shortly afterward, I spoke with Sarah by phone. She told me she had a text from Todd Balcain advising that he would be in the office by 11 a.m. that day. She told me that she would provide me with a listing of the Debtor's accounts payable. At 1:40 p.m., I phoned Sarah again and Todd Balcain had not come to the office. I again called his mobile phone but his voicemail box was full.

32. On October 25, 2017, I emailed Sarah to ask her to send me the monthly payables and receivables listings, and to ask her to advise Todd Balcain that I needed to speak with him. She emailed me a payables report later that day, which she told me was "not accurate". I responded on October 26, 2017 to request an accounts receivable report. A true copy of that email thread is attached as **Exhibit "P"**.
33. From October 19 through November 2, 2017, I had no communication from Todd Balcain, despite numerous efforts, leaving him multiple voicemails (on his mobile phone) and sending him multiple emails. On October 27, 2017, I phoned the office and the phone number had been disconnected or discontinued. To my knowledge, the phone service has not yet been restored.
34. On the morning of November 3, 2017, I received an email from Todd Balcain. I responded to that email at 8:34 a.m. on November 3, urging him to call me as soon as possible. Attached as **Exhibit "Q"** is a true copy of that email exchange. I have not yet heard anything further from Mr. Balcain. In that email, Mr. Balcain referred to GBS, which would appear likely to be Guillain-Barré Syndrome. A brief check on the internet discloses that this is a debilitating disease that can cause paralysis and other serious symptoms.

35. After not hearing further from Mr. Balcain on the morning of November 3, 2017, I phoned his home, his mobile phone and the office. The office phone remains disconnected and Mr. Balcain did not answer at the other numbers, nor has he made further contact with me despite several voicemails left by me.

### **Cheques Signed by Unauthorized Individual**

36. Attached as **Exhibit "R"** are true copies of the Agreement for Business Banking: Execution and Account Information, the banking resolutions provided to the Bank by the Debtor, and the signature card from the Debtor. Only Todd Balcain and Kristen were authorized to make and sign cheques on the Operating Line.
37. On or about October 27, 2017, it came to my attention that cheques drawn on the Operating Line had been signed by Sarah, who was not authorized to sign on the account. Upon investigating, I learned that at least six cheques had been signed by Sarah, which appeared to be for payroll. Five cheques had been processed by the Bank for an aggregate of about \$4,300.00 before one was noticed as having an irregular signature.
38. After that discovery, I spoke with Sarah on October 27, 2017 about it. She told me that Todd Balcain had instructed her to sign the cheques. On October 30, 2017, I sent Sarah and Todd Balcain an email concerning the improper cheques, a true copy of which is attached as **Exhibit "S"**. I also sent an email to Todd Balcain that morning, a true copy of which is attached as **Exhibit "T"**, urging him to contact me. He had not made any contact before his email that I received on the morning of November 3, 2017.

39. On October 31, 2017, Sarah phoned me and we discussed the situation. A true copy of my notes of that discussion is attached as **Exhibit "U"**. She advised that Todd Balcain is suffering from a disease that is paralyzing and affects his ability to work. She was unable to access accounts receivable information because the internet service for the Debtor had been disconnected.

### **Concerns of the Bank and Defaults by the Debtor**

40. I have repeatedly attempted to make contact with Todd Balcain since October 16, 2017. I have been unable to have even a single conversation of substance with him. He set up a meeting with me and did not attend. He has advised staff on several occasions that he would be at work, and did not show up. He has not returned calls or emails.
41. It is entirely unclear as to whether there is any management or direction occurring with respect to the Debtor's business. Todd Balcain stopped signing cheques when only he (other than Kristen, whom he did not want involved) was authorized to sign, and instructed Sarah to sign cheques. The Bank is unable to get financial information, including with respect to the accounts receivable which represent the Bank's main collateral.
42. The Debtor has three loans with BDC and has defaulted on its payments on all of those Loans, such that BDC has made demand and commenced a court action. As of November 2, 2017, no payment had been made to BDC.

43. In my discussion with Sarah on October 31, 2017, she advised me that she had visited Todd Balcain at his house, to get her own payroll cheque signed. She also advised me that she obtained signatures from him for the November 3, 2017 payroll cheques on that visit. On November 3, 2017, several staff members presented their payroll cheques for payment at the Bank. I personally spoke to the Bank's branch manager to authorize those cheques to be honoured. Those cheques took the Operating Line to virtually its limit.
44. Also on November 3, 2017, I spoke with Sarah, who advised me that the Debtor's staff are all seriously considering leaving. I am extremely concerned that staff will leave the Debtor's business if immediate action is not taken. If the Debtor loses its staff, it will be very difficult to turn the work in progress into billings, and to collect accounts receivable.
45. As of the morning of November 6, 2017, the Debtor is now in excess of the limit of the Operating Line. An employee attended at a branch of the Bank to attempt to negotiate a paycheque. I advised branch personnel to ask him to return later, as the cheque cannot be honoured with the Operating Line over its limit.
46. With the Operating Line over its limit (and even if some deposits are made in the next day or two, it will be extremely close to the limit), that likely means that the Debtor has no further funds to operate with. If the Debtor's business is not being managed, it appears likely that it will not collect accounts receivable. As of now, the Bank will have to return future cheques drawn on the Operating Line. That will mean

that employees and suppliers are not paid, which one would expect to cause all business activities to cease.

47. From what I have observed, this is a business in crisis as a result of its principal becoming entirely disengaged. While I have not seen evidence of bad faith by Mr. Balcain, and it may be that the issues are a result of serious health problems being experienced by him, it nonetheless is necessary to protect the Bank's interests by seeking the appointment of an Interim Receiver who can evaluate the situation, ensure that employees who are needed can be paid and retained, ensure that jobs are completed and appropriate steps are taken to invoice in a way where payment will become due, and take steps to collect the accounts receivable.
48. The Debtor's business phone and internet service have been disconnected, the phone for at least a week. It is difficult to understand how the Debtor's business operations can continue without such service.
49. In light of BDC having made demand on September 19, 2017, and that demand having gone unsatisfied, it appears that the Debtor is insolvent, in that it is and unable to meet its liabilities as they ordinarily fall due.
50. As a result of the foregoing, a formal demand by the Bank for payment in full of the indebtedness and a Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act* is in the process of being served on the Debtor. I am advised by the Bank's solicitor, David Gerecke, that at least concurrently with the service of the within Motion, the formal demand and Notice under

section 244 will be served upon the Debtor's registered office, which is MLT Aikins LLP, but may not have been brought to the attention of Todd Balcain. Every effort will be made to have it brought to Todd Balcain's attention before the application for appointment of an Interim Receiver in respect of the Debtor is heard by the Court.

51. Based on the above observations, it is my belief that the security position of the Applicant will be jeopardized if immediate action is not taken to secure and preserve the business and assets of the Debtor. Further, it is my belief that it is in the Debtor's interests to have such immediate action taken.

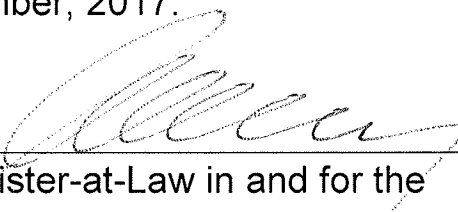
### **Conclusion**

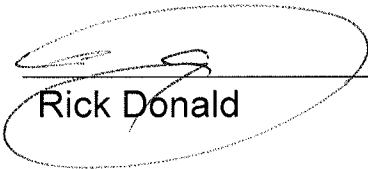
52. For the foregoing reasons, and as a result of the Debtor's continued failure to make payments on the Indebtedness as required, BMO is greatly concerned that its security is in jeopardy and may be seriously damaged if action is not taken immediately. This could greatly affect the amount of proceeds recoverable by BMO. Therefore, BMO has concluded that an Order appointing an Interim Receiver in respect of the Debtor is required in order to preserve the value of the assets owned by the Debtor.
53. BMO proposes that the firm of BDO Canada Limited be appointed as interim receiver of the property, assets and undertakings of the Debtor, with the primary initial mandate of securing and preserving the property, and taking such immediate measures as may be advisable and necessary.



54. I make this affidavit in good faith and in support of BMO's application for an Order appointing an Interim Receiver over the property, assets and undertakings of the Debtor, all as more particularly described in the Notice of Motion of BMO and the Draft Order attached thereto filed with this Honourable Court.

SWORN BEFORE ME at the City )  
of Winnipeg, in the Province of )  
Manitoba, this 6<sup>th</sup> day of )  
November, 2017. )

  
\_\_\_\_\_  
A Barrister-at-Law in and for the  
Province of Manitoba

  
\_\_\_\_\_  
Rick Donald