

File No. CI 17 – 01 - 11109

THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF: The appointment of a Receiver pursuant to Section 243 of the
Bankruptcy and Insolvency Act, RSC 1985, c. B-3

B E T W E E N:

BANK OF MONTREAL

Plaintiff,

- and -

8000140 CANADA LTD., carrying on business as Servpro Winnipeg

Defendant,

ORDER

McDougall Gauley LLP
500-616 Main Street
Saskatoon, SK S7H 0J6
Telephone: 306-665-5432
Email: cfrith@mcdougallgauley.com
Attention: Craig Frith
Solicitors for BDO Canada Limited

Taylor McCaffrey Lawyers
2200-201 Portage Avenue
Winnipeg, MB R3B 3L3
204-988-0375
djackson@tmlawyers.com
Attention: David R.M. Jackson
Agents for McDougall Gauley LLP

3. approving the Receiver's \$153,432.91 interim distribution to the Canada Revenue Agency ("CRA") on account of its deemed trust claim for employee source deductions, *nunc pro tunc*;
4. approving the Receiver's activities as set out in the report of the Receiver dated January 20, 2021 (the "**Second Report**"), including the Receiver's receipts and disbursements for the period of November 8, 2017 to January 18, 2021, as detailed in Appendix "K" to the Report;
5. approving the fees and disbursements of the Receiver and its counsel, as set out in paragraphs 42 to 47 of the Report and the Affidavits of Chris Mazur affirmed January 20, 2021 and Craig Frith affirmed January 20, 2021 (collectively, the "**Fee Affidavits**");
6. authorizing the Receiver to pay all of the Receiver and its counsel's approved and unpaid fees and disbursements to the extent of the amount permitted in the Second Administrative Agreement between the Receiver and the CRA, a copy of which attached to the Report as Appendix "E," with the balance of funds to be distributed to the CRA on account of its deemed trust claim for GST;
7. providing that, upon the filing by the Receiver of a certificate substantially in the form attached hereto as Schedule A, BDO Canada Limited shall be:
 - (a) discharged as Receiver of all of the assets, the undertakings, and properties of the Debtor; and
 - (b) released from any and all liability while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part;

was heard this day at Winnipeg, Manitoba.

ON READING the Second Report, the Fee Affidavits, the Affidavit of Todd Ian Balcain sworn March 19, 2021, and the Supplemental Report of the Receiver dated April 22, 2021, and on hearing the submissions of counsel for the Receiver, Bank of Montreal, and 8000140 Canada Ltd. and Todd Balcain, and no one else appearing although served as evidenced by the Affidavit of Service of Alecia Iwanchuk sworn April 23, 2021, filed, and on hearing no objections to the relief set out in this Order;

SERVICE VALIDATED

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the materials filed in support of the motion is hereby abridged and validated such that the motion is properly returnable on April 30, 2021.

APPROVAL OF THE INTERIM RECEIVER'S ACTIVITIES

1A. THIS COURT ORDERS that the Interim Receiver is hereby discharged, and the actions of the Interim Receiver from the date of the Interim Receivership Order of the Honourable Justice Rempel dated November 8, 2017 to the date of the Receivership Order of the Honourable Justice Dewar dated December 20, 2017, including without limitation the actions of the Interim Receiver more particularly described in the First Report of the Interim Receiver dated December 1, 2017, are hereby approved, *nunc pro tunc*.

APPROVAL OF THE SALES PROCESS AND AUCTIONS

2. THIS COURT ORDERS that the Sales Process conducted by the Receiver for the sale of the Debtor's property and the subsequent sale of the Debtor's inventory and equipment pursuant to the auction conducted by Kaye's Auctions, as described in paragraphs 13 to 17 of the Second Report, are hereby approved.

3. THIS COURT ORDERS that the sale of the Debtor's vehicles pursuant to the auction conducted by Adesa Auctions Canada Corporation and the private sale to Service Master, as described in paragraphs 18 and 19 of the Second Report, are hereby approved.

DISTRIBUTION

4. THIS COURT ORDERS AND DECLARES that the Receiver's \$153,432.91 interim distribution to the Canada Revenue Agency on account of its deemed trust claim, as described in paragraphs 12 and 32 of the Second Report, is hereby approved, *nunc pro tunc*.

APPROVAL OF THE RECEIVER'S CONDUCT

5. THIS COURT ORDERS that the activities of the Receiver set out in the Second Report, including the Receiver's receipts and disbursements for the period of November 8, 2017 to January 18, 2021, as detailed in Appendix "K" to the Report, are hereby approved.

APPROVAL OF THE RECEIVER AND COUNSEL'S FEES AND DISBURSEMENTS

6. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Second Report and the Fee Affidavits, are hereby approved without the necessity of a formal passing or taxation of accounts, and the Receiver may pay the same from the balance of the funds left in the Debtor's estate up to the amount permitted by the Second Administrative Agreement between the Receiver and the CRA, a copy of which is attached to the Report as Appendix "E," with the balance of funds to be distributed to the CRA on account of its deemed trust claim for GST.

DISCHARGE AND RELEASE

7. THIS COURT ORDERS that, upon the Receiver filing a certificate substantially in the form attached hereto as Schedule A to this Order certifying that it has completed the remaining activities described in the Report, the Receiver shall be discharged as Receiver of the assets, the undertakings, and properties of the Debtor; 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 BDO Canada Limited, in its capacity as Receiver.

8. THIS COURT ORDERS AND DECLARES that based on the evidence before the Court:

- (a) the Receiver has satisfied its obligations under the terms of the Orders granted in the within proceedings up to and including the date hereof;

- (b) the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part; and
- (c) without limiting the generality of the foregoing, the Receiver 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 proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

9. THIS COURT ORDERS AND DECLARES that no action or other proceeding shall be commenced against the Receiver, including its officers, directors, employees, solicitors and agents and assigns in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on 14 days' notice to the Receiver, and upon such terms as this Court may direct.

April ___, 2021

Robert A.
Dewar, J

Digitally signed by Robert A.
Dewar, J
Date: 2021.05.05 11:03:38
-05'00'

I, Craig Frith, of the firm of McDougall Gauley LLP, hereby certify that I have received the consents as to the form of the following parties:

David G. Gerecke, Q.C., counsel for Bank of Montreal

Kelsey M. McIntyre, counsel for Todd Ian Balcain and 8000140 Canada Ltd., carrying on business as Servpro Winnipeg

As directed by the Honourable Mr. Justice Dewar.

**SCHEDULE A
RECEIVER'S DISCHARGE CERTIFICATE**

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF: The appointment of a Receiver pursuant to Section 243 of the
Bankruptcy and Insolvency Act, RSC 1985, c. B-3

B E T W E E N:

BANK OF MONTREAL

Plaintiff,

- and -

8000140 CANADA LTD. carrying on business as Servpro Winnipeg

Defendant.

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS:

- A. BDO Canada Limited was appointed Receiver ("Receiver") of all of the assets, property and undertaking of the Defendant, 8000140 Canada Ltd. ("Debtor"), pursuant to an Order of the Court of Queen's Bench dated December 20, 2017 ("Receivership Order");
- B. Pursuant to the Discharge Order of this Court pronounced January 25, 2021 ("Discharge Order"), the Receiver has completed the administration of the Debtor's estate; and
- C. Unless otherwise indicated the Receiver's Certificate shall have the same meaning as given to them in the Discharge Order.

THE RECEIVER CERTIFIES the following:

1. The Receiver has completed the outstanding activities described in the Report and completed its administration of the Debtor's estate.

DATED at _____, Ontario, this ____ day of _____, 2021.

BDO Canada Limited in its capacity as Receiver of
8000140 Canada Ltd.

Per:

Name: Chris Mazur, CIRP, LIT
Title: Senior Vice President