

**THE QUEEN'S BENCH**  
**WINNIPEG JUDICIAL 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

Plaintiff

and

8000140 CANADA LTD. carrying on business  
as SERVPRO WINNIPEG

Defendant

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**STATEMENT OF CLAIM**

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A. J. Stacey  
Agents for Miller Thomson LLP

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TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$750.00 for costs and have the costs assessed by the court.

November 6, 2017

J. SANDER  
DEPUTY REGISTRAR  
Issued COURT OF QUEEN'S BENCH  
Deputy Registrar  
WINNIPEG, MANITOBA

TO: 8000140 CANADA LTD. carrying on business as  
SERVPRO WINNIPEG  
c/o MLT Aikins  
30<sup>th</sup> Floor, 360 Main Street  
Winnipeg, MB R3C 4G1

### CLAIM

1. The Plaintiff claims as against the Defendants, as follows:
  - (a) The appointment of an interim receiver, receiver and/or receiver and manager of the assets, properties, and undertakings of the Company (as hereinafter defined) pursuant to section 47 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3.
  - (b) Judgment against the Defendants, for the sum of \$ 895,712.84 plus interest thereon from and after October 31<sup>st</sup>, 2017 at the Bank of Montreal's prime rate of interest plus 1.75% per annum;
  - (c) Costs of this action on a solicitor and client basis;
  - (d) Such further and other relief as this Honourable Court may deem just.
2. The Plaintiff, Bank of Montreal ("**BMO**") is a chartered bank continued pursuant to the *Bank Act* with a branch located in Winnipeg, Manitoba.
3. The Defendant, 8000140 Canada Ltd. carrying on business as Servpro Winnipeg (the "**Company**") is a corporation federally incorporated pursuant to the laws of Canada, and carries on business in the City of Winnipeg, Province of Manitoba under the registered business name of Servpro Winnipeg.

#### A. INDEBTEDNESS TO THE BANK

4. BMO's claim relates to outstanding advances made by BMO to the Company in connection with an Operating Loan Agreement dated December 16, 2013, as amended by Amendment Agreement dated August 29, 2016 (collectively the "Operating Demand Loan") (Loan Account No. 0003-1986-212). The current amounts owing by the Company to BMO as at October 31<sup>st</sup>, 2017 are as follows:

Principal:	\$891,877.03
Interest:	\$3,615.81
Other Charges	\$220.00
<b>TOTAL</b>	<b>\$895,712.84</b>
Per Diem:	\$120.95

5. The Operating Demand Loan is a demand facility giving BMO the right to demand the entire amount due and outstanding plus accrued interest and other amounts properly charged thereunder at any time. The Company has entered into a General Security Agreement with BMO dated December 16, 2013 (the "GSA") by which it has granted to BMO a continuing security interest and charge over its assets and undertakings.

6. The Company is in default with respect to its obligations to BMO, including without limitation, in the following respects:

(a) The Company caused or permitted cheques to be drawn on the ODL that were signed by a person who was not an authorized signing authority, and such cheques were presented for payment by the payees, which represents a breach of the Company's banking agreement(s) with BMO and represents an assignment of the Company's rights under the Loan Agreement to a third party without the prior written consent of BMO.

(b) Contrary to clause 11(d) of the GSA, the Company has become insolvent in that it is unable to meet its obligations as they come due. Notably, the other main secured creditor of the Company, Business Development Bank of Canada ("BDC"), has served formal demand on the Company for payment of loans owed by the Company to BDC, and the Company has failed to make any payment as required by such demand.

- (c) BMO believes in good faith that the prospect of payment or performance by the Debtor is impaired or that the collateral pursuant to the GSA or part thereof is in danger of being lost, damaged or confiscated, in that:
- i. The principal of the Company, Todd Balcain has ceased to actively participate in the management of the Company, such that it is not being actively managed by any person qualified or authorized to do so;
  - ii. BMO's principal collateral is represented by the accounts receivable of the Company, and the lack of active management by Todd Balcain or any other person in his place jeopardized the collectability of such accounts receivable, in whole or in part, and the ability to generate further revenues; and
  - iii. employees of the Company indicate their desire to cease their employment and in the circumstances leave the Company entirely unable to carry on its operations.
7. Formal demand and a Notice of Intention to Enforce Security under subsection 244(1) of the *Bankruptcy and Insolvency Act*, are in the process of being served upon the Company in respect of the amounts due and payable under the Loans by way of a letter dated November 2<sup>nd</sup>, 2017. The situation involving the Company is urgent, so this Claim is being commenced prior to confirmation of service of such demand.
8. The Company has refused or neglected to pay the amounts due and payable in respect of the Loans, referred to herein, and continues to refuse or neglect to pay the amounts due and payable. The Company remains in default in respect of the Operating Demand Loan.

DATED this 6 day of November, 2017

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