

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE MCEWEN)
)
)

MONDAY, THE 6TH
DAY OF JULY, 2020

B E T W E E N :

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

**ASTORIA ORGANIC MATTERS LTD. and
ASTORIA ORGANIC MATTERS CANADA LP**

Respondents

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by BDO Canada Limited (“**BDO**”), in its capacity as Court appointed receiver (in such capacity, the “**Receiver**”), without security, of the undertaking, property and assets of each of Astoria Organic Matters Ltd. and Astoria Organic Matters Canada LP (together, the “**Debtors**”), for an Order:

- (i) approving the Sixth and Final Report of the Receiver dated June 22, 2020 (the “**Final Report**”) and the activities of the Receiver set out therein;
- (ii) approving the fees and disbursements of the Receiver and those of its legal counsel, Aird & Berlis LLP (“**A&B**”), including an accrual for fees and disbursements to be incurred to the completion of these proceedings;

(v) authorizing and directing the Receiver to distribute certain funds to Business Development Bank of Canada (“**BDC**”) on account of the Debtors’ secured indebtedness owing to BDC for principal, interest and costs;

(vi) approving the Receiver’s Statement of Receipts and Disbursements as at June 22, 2020 (as appended to the Final Report);

(vii) discharging BDO as Receiver of the assets, undertakings and properties of the Debtors, effective upon the filing of a certificate by the Receiver certifying that all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, in substantially the form attached hereto as **Schedule “A”** (the “**Discharge Certificate**”); and

(viii) releasing BDO from any and all liability, as set out in paragraph 8 of this Order,

was heard this day by judicial videoconference.

ON READING the Motion Record of the Receiver, including the Final Report and the appendices thereto, the affidavit of Christopher J. Mazur sworn June 22, 2020 and the affidavit of Kyle Plunkett sworn June 22, 2020, and on hearing the submissions of counsel for the Receiver and such other counsel as were present and listed on the Counsel Slip, no one else appearing for any other party named on the Service List, although served as evidenced by the affidavit of service of Diana McMillen sworn June 24, 2020, filed.

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE FINAL REPORT

2. **THIS COURT ORDERS** that Final Report and the conduct and activities of the Receiver described therein be and are hereby approved; provided, however, that only the Receiver, in its

personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF RECEIPTS AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the Receiver's Statement of Receipts and Disbursements for the period of April 13, 2017 to June 22, 2020, as set out in Appendix "Q" to the Final Report, be and is hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, being fees and disbursements of \$35,091.50 plus HST of \$4,561.90, totalling \$39,653.40, plus the Receiver Fee Accrual (as defined in the Final Report) to the completion of these proceedings, as set out in Appendix "O" to the Final Report, are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, A&B, being fees and disbursements of \$202,163.27 plus HST of \$25,820.52, totalling \$227,983.79, plus the Legal Fee Accrual (as defined in the Final Report) to the completion of these proceedings, as set out in Appendix "P" to the Final Report, are hereby approved.

APPROVAL OF DISTRIBUTION

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to make the BDC Distribution (as defined in the Final Report) with the monies remaining in its hands to BDC on account of the Debtors' secured indebtedness owing to BDC, as outlined in the Final Report, for principal, interest and costs, after provision for any amounts that are required to be paid to any other party in priority to BDC, if any, under the *Bankruptcy and Insolvency Act* (Canada).

DISCHARGE AND RELEASE

7. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraph 6 above and the filing of the Discharge Certificate by the Receiver in the form attached hereto as **Schedule "A"**, BDO shall be discharged as Receiver of the assets, undertakings and properties of the Debtors, provided however that notwithstanding its discharge herein (a) BDO shall remain

Receiver for the performance of such incidental duties as may be required to complete the administration of its mandate, 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 in its capacity as Receiver.

8. **THIS COURT ORDERS AND DECLARES** that, upon the Receiver filing the Discharge Certificate, BDO is hereby released and discharged from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO 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, BDO is hereby forever released and discharged from 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** that, notwithstanding Rule 59.05, this Order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.



SCHEDULE “A”

Court File No. CV-18-602745-00-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

ASTORIA ORGANIC MATTERS LTD. and
ASTORIA ORGANIC MATTERS CANADA LP

Respondents

RECEIVER’S DISCHARGE CERTIFICATE

RECITALS

(A) Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made April 13, 2017 (the “**Appointment Order**”), BDO Canada Limited (“**BDO**”) was appointed as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of each of Astoria Organic Matters Ltd. and Astoria Organic Matters Canada LP (together, the “**Debtors**”).

(B) Pursuant to an Order of the Court made July 6, 2020 (the “**Distribution and Discharge Order**”), BDO was discharged as the Receiver of the Debtors to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the

Receiver, provided, however, that notwithstanding its discharge: (a) the Receiver will remain the Receiver for the performance of such incidental duties as may be required to complete the administration of these receivership proceedings; and (b) the Receiver will continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of BDO, in its capacity as the Receiver.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Distribution and Discharge Order.

THE RECEIVER CERTIFIES the following:

1. all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver; and
2. this Certificate was filed by the Receiver with the Court on the _____ day of _____, 2020.

BDO CANADA LIMITED, solely in its capacity as the Court-appointed receiver of the Respondents, and not in its personal capacity

Per: _____

Name:

Title:

BUSINESS DEVELOPMENT BANK OF CANADA
Applicant

-and-

ASTORIA ORGANIC MATTERS LTD. and
ASTORIA ORGANIC MATTERS CANADA LP
Respondents

Court File No. CV-17-11760-00CL

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6 June 20

The Order shall go as per the draft filed and signed.
No one opposes. BDC supports the motion.
i have reviewed the materials and heard submissions of counsel.
The relief sought is fair and reasonable, including the fees/disbursements, and approval of the R&D, Distribution and Final Report.



ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

ORDER
(Distribution and Discharge)

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, 181 Bay Street
Toronto, ON M5J 2T9

Kyle Plunkett (LSO #61044N)

Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

Miranda Spence (LSO #60621M)

Tel: (416) 865-3414
Fax: (416) 863-1515
Email: mspence@airdberlis.com

Lawyers for BDO Canada Limited, in its capacity as Court appointed receiver of Astoria Organic Matters and Ltd. and Astoria Organic Matters Canada LP.