

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C.1985, C.B-3 AS AMENDED;

IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C-
43, AS AMENDED

THE HONOURABLE MR.) FRIDAY, THE 14TH
)
JUSTICE CAVANAGH) DAY OF MAY, 2021
)

B E T W E E N:

THE BANK OF NOVA SCOTIA

Applicant

- and -

1854313 ONTARIO LIMITED

Respondent

ANCILLARY ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as the Court-appointed receiver (the "**Receiver**") of certain property, assets and undertakings of 1854313 Ontario Limited (the "**Debtor**") for an order:

1. That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today, and dispensing with further service and confirmation hereof;
2. An Order that concurrent with the completion of the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver and Glengate Investments Inc. dated March 31, 2021, that the contract between the Debtor and Enercare Home and Commercial Services Limited Partnership ("**Enercare**"), dated

August 19, 2019 (the “**Enercare Contract**”) be immediately terminated and that the Receiver be and is then authorized to issue the Disclaimer of Contract appended to the Second Report of the Receiver dated April 30, 2021 as Appendix “H” to Enercare, in respect of the Enercare Contract;

3. An Order that concurrent with the completion of the Transaction, that the lease between the Debtor and Hart Stores Inc. (“**Hart**”), dated January 11, 2018 (the “**Hart Lease**”) be immediately terminated and that the Receiver be and is then authorized to issue the Disclaimer of Lease appended to the Second Report of the Receiver dated April 30, 2021 as Appendix “G” to Hart, in respect of the Hart Lease;
4. Approving the Receiver’s Second Report and the Confidential Supplementary Report dated April 30, 2021 (collectively, the “**Second Report**”) and the activities and conduct of the Receiver as detailed therein;
5. Approving the fees and disbursements of the Receiver and its counsel, as detailed in the Second Report (the “**Professional Fees**”), and payment of same;
6. Sealing the Confidential Supplementary Report dated April 30, 2021 (“**Confidential Supplementary Report**”) until the completion of the Transaction, or until a further order of this Court;
7. Approving the Statement of Receipts and Disbursements as detailed in the Second Report;
8. Authorizing the Receiver to make the Proposed Distribution (as detailed in the Second Report), after payment of the Professional Fees herein approved and subject to a reserve to cover the Accrued Obligations and Remaining Costs; and,
9. Discharging BDO as Receiver, and releasing the Receiver from liability for its actions while acting in such capacity, save and except for the Receiver’s gross negligence or willful misconduct.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, and on hearing submission of counsel for all parties referenced on the Counsel Slip, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Tayler Reiners sworn May 4, 2021, filed:

1. **THIS COURT ORDERS** that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be and is abridged so that this motion is properly returnable today and hereby dispenses with further service and confirmation hereof.

2. **THIS COURT ORDERS** that concurrent with the completion of the Transaction that the Enercare Contract shall be immediately terminated and that the Receiver be and is then authorized to issue the Disclaimer of Contract appended to the Second Report to Enercare as Appendix "H", in respect of the Enercare Contract.

3. **THIS COURT ORDERS** that concurrent with the completion of the Transaction that the Hart Lease shall be immediately terminated and that the Receiver be and is then authorized to issue the Disclaimer of Lease appended to the Second Report as Appendix "G" to Hart, in respect of the Hart Lease.

4. **THIS COURT ORDERS** that the Second Report, and the activities and conduct of the Receiver as detailed therein, be and are approved.

5. **THIS COURT ORDERS** the Professional Fees, and payment of same, be and are hereby approved;

6. **THIS COURT ORDERS** that the Confidential Supplementary Report be and is hereby sealed until the completion of the Transaction, or until further Order of this Court.

7. **THIS COURT ORDERS** that the Interim Statement of Receipts and Disbursements be and is hereby approved.

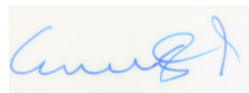
8. **THIS COURT ORDERS** that the Proposed Distribution is approved and that the Receiver be and is hereby authorized and directed to make the Proposed Distribution, after payment of the Professional Fees herein approved and subject to a reserve to cover the Outstanding Disbursements (as defined in the Second Report) as follows:

- a) Payment to The Bank of Nova Scotia ("**BNS**") of the sum due of \$650,000.00 plus interest pursuant to borrowings made by the Receiver as evidenced by the Receiver's Certificates;
- b) Payment to BNS in the sum of \$2,650,000.00;
- c) Assigning the Post Filing Collections (as defined in the Second Report) to BNS;

- d) Subsequent distributions to BNS as the Receiver determines appropriate, without further order of this Court, provided the aggregate distributions to BNS do not exceed the amount of its secured claim against the Debtor, including all interest and costs;
- e) Authorizing the Receiver to pay the Outstanding Disbursements from the available cash on hand, and any subsequent cash receipts, without further approval of this Court.

9. **THIS COURT ORDERS** that upon completion of the Proposed Distribution and the Remaining Matters (as defined in the Second Report) and upon the Receiver filing a certificate substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Discharge Certificate**") certifying that it has completed the other activities described in the Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets 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.

10. **THIS COURT ORDERS AND DECLARES** that effective upon filing of the Receiver's Discharge Certificate pursuant to paragraph **Error! Reference source not found.** of this Order, BDO Canada Limited is hereby released and discharged from any and all liability that BDO Canada Limited now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO Canada Limited 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 Canada Limited 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.



Digitally signed by
Mr. Justice Cavanagh

Justice, Ontario Superior Court of Justice
(Commercial List)

Schedule "A" to Discharge Order – Form of Receiver's Certificate

Court File No. CV-20-00650239-00CL

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B E T W E E N:

THE BANK OF NOVA SCOTIA

Applicant

- and -

1854313 ONTARIO LIMITED

Respondent

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 29, 2020, BDO Canada Limited ("**BDO**") was appointed as the receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 1854313 Ontario Limited (the "**Debtor**").

B. Pursuant to an Order of the Court dated May 14, 2021 (the "**Discharge Order**"), BDO was discharged as Receiver to be effective upon the filing by the Receiver with the Court of a certificate confirming that the Receiver has completed the activities described in the Receiver's Second Report and the Confidential Supplementary Report dated April 30, 2021 (the "**Second Report**") and all matters to be attended to in connection with the Receivership have been provided for to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES that the Receiver has completed all activities described in the Second Report and all matters to be attended to in connection with the Receivership have been provided for to the satisfaction of the Receiver.

BDO Canada Limited, solely in its capacity as court-appointed receiver and manager of the assets, undertaking and property of 1854313 Ontario Limited, and not in its personal or corporate capacity

Per: _____
Name:
Title:

THE BANK OF NOVA SCOTIA
Applicant

v.

1854313 ONTARIO LIMITED
Respondent

Court File No. CV-20-00650239-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ANCILLARY ORDER

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BDO Canada Limited