

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

THE HONOURABLE) TUESDAY, THE 30TH DAY
)
JUSTICE McEWEN) OF MARCH, 2021
)

B E T W E E N:

HSBC BANK CANADA

Applicant

- and -

1928306 ONTARIO INC.

Respondent

**ORDER
(Approval of Distribution, Discharge of Receiver and Other Relief)**

THIS MOTION made by BDO Canada Limited (“**BDO**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties (collectively, the “**Property**”) of 1928306 Ontario Inc. (the “**Debtor**”), for an Order approving a final distribution to the Applicant and the discharge of the Receiver, among other relief as described in the Notice of Motion dated March 22, 2021, was heard this day in Toronto, Ontario by videoconference via Zoom due to the COVID-19 pandemic.

ON READING the Second Report of the Receiver dated March 22, 2021 (the “**Second Report**”), the fee affidavits of Gary Cerrato sworn March 21, 2021 and Puya Fesharaki sworn March 22, 2021, respectively (the “**Cerrato Affidavit**” and the “**Fesharaki Affidavit**”, respectively), and on hearing the submissions of counsel for the Receiver, no one else appearing although duly served as appears from the affidavit of service of Roxana G. Manea sworn March 23, 2021, and upon being advised that the Applicant, HSBC Bank Canada, which will suffer a shortfall in the recovery of its secured debt, does not oppose the relief sought herein including approval of the Receiver’s fees:

SERVICE

1. **THIS COURT ORDERS** that the service of the Notice of Motion and the Motion Record is hereby validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF ACTIVITIES AND PROFESSIONAL FEES

2. **THIS COURT ORDERS** that the Second Report and all of the conduct and activities of the Receiver described therein are hereby ratified and approved.

3. **THIS COURT ORDERS** that the Receiver’s statement of final receipts and disbursements attached as **Appendix “H”** to the Second Report is hereby approved.

4. **THIS COURT ORDERS** that the professional fees and disbursements of the Receiver for the period from February 3, 2020 to March 21, 2020 in the amount of \$67,139.83, including HST of \$8,728.18 for a total of \$75,868.01 plus the estimated amount of \$2,500, plus HST, to complete the administration of the estate, all as more fully set out in the Second Report and the Cerrato Affidavit attached thereto as **Appendix “I”** are hereby approved.

5. **THIS COURT ORDERS** that the professional fees and disbursements of Thornton Grout Finnigan LLP, for the period from January 28, 2020 to November 30, 2020 in the amount of \$146,913.53, including HST of \$18,951.47 for a total of \$165,865.00 plus the estimated amount of \$10,000, plus HST, to complete its mandate as Receiver's counsel, all as more fully set out in the Second Report and the Fesharaki Affidavit attached thereto as **Appendix "J"** are hereby approved.

APPROVAL OF RECEIVER'S PROPOSED DISTRIBUTION

6. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to pay the net proceeds of realization from the Property in accordance with the proposed distribution set out in the Second Report as follows:

- (a) first, \$9,342.39 to Canada Revenue Agency in respect of the CRA Property Claim (as defined in the Second Report);
- (b) second, \$75,868.01 to the Receiver in respect of its professional fees and disbursements together with the estimated amount of \$2,500, plus HST, to complete the administration of the estate; and
- (c) third, the balance of funds available in the Receiver's trust account, if any, after payment of the foregoing amounts, to HSBC Bank Canada as senior secured lender.

DISCHARGE AND RELEASE OF RECEIVER

7. **THIS COURT ORDERS** that upon the Receiver serving on the Service List a certificate in the form attached hereto as **Schedule "A"** (the "**Discharge Certificate**"), with the filing of such certificate with the Court to follow as soon as practicable, the Receiver shall be discharged as

Receiver of the Property, provided, however, that notwithstanding its discharge herein, 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 delivery of the Discharge Certificate in accordance with the preceding paragraph, 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 of the Debtor herein, save and except for any gross negligence or wilful misconduct on the Receiver's part.

GENERAL

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.



Schedule “A” – Form of Receiver’s Discharge Certificate

Court File No. CV-20-00635589-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as
amended*

BETWEEN:

HSBC BANK CANADA

Applicant

- and -

1928306 ONTARIO INC.

Respondent

RECEIVER’S DISCHARGE CERTIFICATE

RECITALS

1. Pursuant to an application by HSBC Bank Canada under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, and an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 3, 2020, BDO Canada Limited. (“**BDO**”) was appointed as Receiver of the assets, undertakings and properties (the “**Property**”) of 1928306 Ontario Inc. (the “**Debtor**”).
2. Pursuant to an Order of the Court dated March 30, 2021 (the “**Discharge Order**”), BDO was to be discharged as Receiver of the Property effective upon payment of the amounts set out in the Discharge Order and upon the delivery by the Receiver to the Service List of

a certificate confirming that all matters to be attended to in connection with the receivership have been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES the following:

- (a) all matters, if any, to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver;
- (b) the Receiver has made the payments outlined in paragraph 6 of the Discharge Order; and
- (c) this Certificate was served by the Receiver on the Service List on the ____ day of _____, 2021 at _____, and the filing of this Certificate with the Court will follow as soon as practicable.

BDO Canada Limited, solely in its capacity as Court-appointed Receiver of 1928306 Ontario Inc. and not in its personal or corporate capacity.

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

HSBC BANK CANADA

Applicant

and

1928306 ONTARIO INC.

Respondent

Court File No. CV-20-00635589-00CL

30 March 21

Order shall go as per the draft filed and signed.
The relief sought is unopposed, and is fair and reasonable.



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

Proceedings commenced at Toronto

**ORDER
(Approval of Distribution, Discharge of Receiver and Other
Relief)**

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