

ONTARIO
SUPERIOR COURT OF JUSTICE
(FAMILY COURT)

BETWEEN:

MERVIN BRIAN SCHICK

Applicant

- and -

DEBORAH LYNN CARDINAL (FORMERLY SCHICK), 1475459 ONTARIO INC. (OPERATING AS END OF THE ROLL) and SCHICK'S HOLDINGS INC.

Respondents

APPLICATION UNDER sections 21.9 and 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended and under sections 207, 209 and 248 of the *Business Corporations Act*, R.S.O. 1990, c.B.16, as amended

Third Report of BDO Canada Limited
In its joint capacity as Court-appointed Sales Officer & Liquidator of
1475459 Ontario Inc. o/a End of the Roll
&
Schick's Holdings Inc.

December 1, 2023

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APPENDIX "I" – Second Report of the Sales Officer – Corporate dated March 27, 2023 (without appendices)

APPENDIX "J" – Affidavit of Jonathan Gross sworn November 29, 2023

I. INTRODUCTION

1. Pursuant to the order of The Honourable Mr. Justice Minnema of the Ontario Superior Court of Justice (Family Court) (the "Court") dated March 2, 2022 (the "Sales Officer – Corporate Appointment Order"), BDO Canada Limited ("BDO") was appointed as sales officer (the "Sales Officer – Corporate") of 1475459 Ontario Inc. o/a End of the Roll ("Opco") and Schick's Holdings Inc. ("Holdco" and together with Opco, the "Companies"). The Sales Officer – Corporate was appointed to develop and carry out a sales process (the "Opco Sales Process") for the assets of Opco (the "Personal Property") and a sales process (the "Holdco Sales Process" and together with the Opco Sales Process, the "Sales Processes") for the assets of Holdco (the "Holdco Property" and collectively with the Personal Property, the "Property"), subject to approval of the Court. A copy of the Sales Officer – Corporate Appointment Order is attached hereto as Appendix "A".
2. The Personal Property primarily consisted of flooring inventory, equipment and office furniture. The Holdco Property primarily consisted of real property municipally known as 695 Gardiners Road, Kingston Ontario (the "Real Property"), such Real Property being the premises from which Opco operated.
3. Pursuant to the order of The Honourable Mr. Justice Minnema of the Court dated April 6, 2023 (the "Liquidator Appointment Order"), BDO was appointed as liquidator (the "Liquidator" and collectively with the Sales Officer - Corporate, the "Court Officer") of the Companies. The Liquidator was appointed for the purpose of winding up the Companies' business and affairs and distributing all of the Companies' assets, undertakings and properties, including all proceeds thereof. A copy of the Liquidator Appointment Order is attached hereto as Appendix "B".
4. Opco and Holdco are owned by Mervin Schick ("Schick") and Deborah Cardinal ("Cardinal" and collectively with Schick the "Stakeholders").

II. PURPOSE OF REPORT

5. The purpose of this third report of the Court Officer (the "Third Report") is to:
 - a) Provide this Court with an update pertaining to the Court Officer's activities since the second report of the Sales Officer - Corporate dated March 17, 2023 (the "Second Report"); and
 - b) Recommend that the Court make an order:
 - (i) Approving this Third Report including the action and activities of the Court Officer as set out herein;
 - (ii) Approving the Court Officer's interim statement of receipts and disbursements relating to Opco for the period March 2, 2022 to November 28, 2023 (the "Opco Interim R&D");
 - (iii) Approving the Court Officer's interim statements of receipts and disbursements relating to Holdco for the period March 2, 2022 to November 28, 2023 (the "Holdco Interim R&D");

- (iv) Approving the fees and disbursements of the Court Officer and its legal counsel Fogler Rubinoff LLP ("Fogler") outlined in paragraphs 23 and 24 herein and detailed in the supporting fee affidavits appended hereto, to be split equally (50/50) between Opco and Holdco;
- (v) Approving an additional fee reserve of \$5,000 plus HST and \$2,000 plus HST from the Opco estate for the fees of the Court Officer and Fogler, respectively, to complete the administration of Opco up to the date of the assignment into bankruptcy;
- (vi) Approving and authorizing the Liquidator, *nunc pro tunc*, to conduct a creditor claims process with respect to Holdco as detailed herein (the "Claims Process");
- (vii) Approving a claims bar order and setting a claims bar date of 90 days from the date of the claims bar order;
- (viii) Approving and authorizing the Sales Officer to remit the Personal Property Transaction HST (as defined herein) with respect to Opco to the Canada Revenue Agency ("CRA");
- (ix) Approving and authorizing the Liquidator assign Opco into bankruptcy;
- (x) That upon the filing by the Court Officer of a discharge certificate ("Discharge Certificate"), discharging BDO as Court Officer of all of the assets, undertaking and properties of Opco; and
- (xi) That, upon the filing of the Discharge Certificate, releasing BDO from any and all liability it now has or may have of, or in any way arising out of the acts or omissions of BDO while acting in its capacity as Court Officer of Opco, save and except for any gross negligence or willful misconduct on the Opco Court Officer's part.

III. QUALIFICATIONS

6. In preparing this Third Report, the Court Officer has relied upon financial information provided by the Stakeholders (collectively, the "Information"). The Court Officer has reviewed the Information for reasonableness and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought therein. The Court Officer has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("GAAS") pursuant to the Canadian Institute of Chartered Accountants Handbook and, as such, the Court Officer expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information. An examination of financial forecasts in accordance with the Chartered Professional Accountants of Canada Handbook has not been performed.
7. Unless otherwise noted, all monetary amounts contained in this Third Report are expressed in Canadian dollars ("CAD").

IV. ACTIVITIES OF THE COURT OFFICER

8. Since the Second Report of the Sales Officer – Corporate, the Court Officer has:
 - a) Reviewed the Liquidator Appointment Order and endorsement of the Honourable Justice Minnema dated April 6, 2023;
 - b) Engaged in review, consideration and correspondence with Fogler, the Stakeholders and their respective counsel regarding the approach and arrangements to affect a wind-down of the Companies;
 - c) Opened the Liquidator’s online case websites for each of Opco and Holdco, which case websites were established to facilitate the sharing of information with interested parties;
 - d) Corresponded with MNP LLP (“MNP”), the Companies’ external accountants, Opco’s former franchisor (the “Franchisor”) and the Stakeholders regarding the taking of possession of the Companies’ books and records;
 - e) Corresponded with and provided direction to the Canadian Imperial Bank of Commerce (“CIBC”) to transfer all funds in the Companies’ accounts to the Liquidator, to provide the Liquidator with bank statements and to close the Companies’ bank accounts with CIBC.
 - f) Corresponded with Cardinal regarding CIBC bank account activity;
 - g) Opened separate trust bank accounts for each of the Companies with the Royal Bank of Canada (“RBC”) and segregated the Companies’ funds in the RBC bank accounts.
 - h) Corresponded with MNP regarding the completion of fiscal year-end October 31, 2022 financial statements and the filing of corporate tax returns for both Opco and Holdco for the same period;
 - i) Inquired into and corresponded with the Stakeholders, their respective counsel, MNP, the Franchisor and Fogler regarding certain asset and liability balances reported in the fiscal 2022 financial statements;
 - j) In consultation with the Stakeholders, engaged MNP to complete Holdco’s fiscal year-end October 31, 2023 financial statements and corporate tax return;
 - k) Corresponded and coordinated with MNP, the Franchisor and Cardinal regarding financial information and documentation required to complete fiscal 2023 tax filing obligations;
 - l) Reviewed all Information received from the Stakeholders, their respective counsel, MNP and the Franchisor;
 - m) Prepared and filed a fiscal year-end October 31, 2023 nil corporate tax return with respect to Opco;
 - n) Corresponded with the CRA regarding adding the Liquidator as an authorized administrator on the Companies’ online accounts with the CRA;
 - o) Opened separate sales tax branch accounts with the CRA for the Companies;

- p) Prepared and filed all outstanding sales taxes returns for the Companies;
- q) Corresponded and coordinated with the CRA to complete a payroll trust examination relating to Opco;
- r) Reviewed the Information and corresponded with MNP and Cardinal to ascertain the known creditors and potential claimants of the Companies;
- s) Commenced a creditor claims process with respect to Holdco; and
- t) Prepared this Third Report.

V. HOLDCO CREDITOR CLAIMS PROCESS

9. Pursuant to the Liquidator Appointment Order, the Liquidator commenced a creditor claims process with respect to Holdco. Specifically, on October 21, 2023, the Liquidator published a newspaper advertisement in The Kingston Whig-Standard informing the public of the Liquidator Appointment Order and that any person who believes that it has a claim against Holdco should submit a proof of claim to the Liquidator (the "Claims Process Newspaper Advertisement"). A copy of the Claims Process Newspaper Advertisement is attached hereto as Appendix "C".
10. Additionally, on October 23, 2023, the Liquidator issued, via either ordinary mail or email, to all known creditors and potential claimants of Holdco (the "Holdco Claims Notice List"), a notice of the Liquidator Appointment Order, a blank proof of claim form and an instruction letter to assist with completing the blank proof of claim form (the "Creditor's Package"). The Holdco Claims Notice List and a sample copy of the Creditor's Package is attached hereto as Appendix "D" and Appendix "E", respectively. The Court Officer has also posted the Creditor's Package on the Liquidator's case website for Holdco.
11. As at the date of this Third Report, no claims have been received by the Liquidator.
12. Pursuant to the provisions of the *Business Corporations Act* (the "BCA") and the *Assignment and Preferences Act* (the "APA") the Liquidator is required to obtain a claims bar order, whereby claimants must submit their claim to the Liquidator within a time to be limited by such claims bar order. In the event that a claimant fails to submit a claim to the Liquidator by the date specified in a claims bar order, the claimant shall be deemed to be no longer a creditor of the estate and will be wholly barred of any right to share in the proceeds thereof. Although neither the BCA or the APA specify the time within which a claimant must submit a claim to the Liquidator, the Liquidator believes it to be fair and reasonable to provide claimants with 90 days from the date of a claims bar order to submit their claim to the Liquidator, failing which the claimant shall be deemed to be no longer a creditor of the estate and wholly barred of any right to share in the proceeds thereof.
13. As soon as reasonably possible and not more than 10 days following the issuance of a claims bar order, the Liquidator will:

- a) publish another claims process newspaper advertisement in The Kingston Whig-Standard informing the public of the Liquidator Appointment Order and the claims bar order, presuming such order is made, and that any person who believes that it has a claim against Holdco should submit a proof of claim to the Liquidator, which must be received by the Liquidator within 90 days from the date of the claims bar order, failing which the claimant shall be deemed to be no longer a creditor of the estate and it wholly barred of any right to share in the proceeds thereof; and
- b) issue a second creditor's package, via either ordinary mail or email, to all known creditors and potential claimants of Holdco, which will include a notice of the Liquidator Appointment Order and the claims bar order, presuming such order is made, and creditor claims process, a blank proof of claim form, an instruction letter to assist with completing the blank proof of claim form, a copy of the claims bar order and as part of the notice setting out that any person who believes that it has a claim against Holdco should submit a proof of claim to the Liquidator which must be received by the Liquidator within 90 days from the date of the claims bar order, failing which the claimant shall be deemed to be no longer a creditor of the estate and wholly barred of any right to share in the proceeds thereof.

14. Following the receipt of claim submissions up to the claims bar date, the Liquidator will admit or disallow, either in whole or part, each claim received. Where a claim is admitted in whole, the Liquidator will not be required to issue an admittance letter to the creditor with a proven claim. Where a claim is disallowed either in whole or in part, the Liquidator will issue a notice of revision or disallowance notice to the claimant setting out the reasons for the revision or disallowance. Where a notice of revision or disallowance is issued, the Liquidator will also provide a blank notice of dispute to the claimant. A claimant will be provided 15 days from the date the Liquidator issues the notice of revision or disallowance or such later date as the Liquidator may agree to in writing or the Court may order, to submit a notice of dispute to the Liquidator, failing which the Liquidator's position set out in the notice of revision or disallowance will be final and binding upon the claimant.

15. Where a claimant submits a notice of dispute which cannot be mutually resolved, the Liquidator may need to bring the matter before the Court for resolution.

16. Following the conclusion of the Holdco creditor claims process, the Liquidator will present the results of the creditor claims process to the Court and seek Court approval to distribute Holdco funds held in trust by the Liquidator to creditors of Holdco with proven claims, if any.

VI. ASSIGNMENT IN BANKRUPTCY

17. Pursuant to the Liquidator Appointment Order, the Liquidator is empowered and authorized to file an assignment in bankruptcy on behalf of either of the Companies. In the view of the Liquidator, Opco is insolvent as its liabilities as reported in its fiscal year-end October 31, 2022 financial statements prepared by MNP report liabilities of \$459,808

greatly exceeding its assets, which have all been recovered upon, are being held in trust by the Liquidator and currently amount of approximately \$72,600 as detailed below. Given that Opco is insolvent the Liquidator is unable to complete its mandate to affect a dissolution of Opco under the BCA. Accordingly, the Liquidator will file an assignment in bankruptcy on behalf of Opco. BDO will consent to act as trustee in bankruptcy ("Trustee") of Opco.

18. Furthermore, pursuant to paragraph 19 of the Sales Officer – Corporate Appointment Order, all monies collected by the Sales Officer – Corporate in connection with the Opco Sales Process from a sale of the Personal Property, shall be held by the Sales Officer in trust. The Sales Officer completed the Personal Property Transaction (as defined in the Second Report) on November 4, 2022. As part of the Personal Property Transaction the Sales Officer collected \$16,500 in HST (the "Personal Property Transaction HST"), which funds remain in the Court Officer's trust account. The Sales Officer seeks Court approval to remit the Personal Property Transaction HST to the CRA.

VII. HOLDCO CREDITORS

19. The Liquidator has prepared and filed all Holdco outstanding sales tax returns up to fiscal year-end October 31, 2023, however, the returns remain in processing with the CRA. As at the date of this Third Report, the CRA reports Holdco owing approximately \$35,335 to the CRA on account of unpaid sales taxes. However, based on the Liquidator's recent filings, the Liquidator is of the view that Holdco is in a net refund position of approximately \$3,889. Upon the CRA processing the recent sale tax return filings, the Liquidator will coordinate with the CRA to confirm any sales tax liability owing. To the extent a sales tax liability remains owing, the Liquidator will make a remittance to the CRA to satisfy any outstanding liability.
20. Additionally, the draft fiscal year-end October 31, 2023 corporate tax return prepared by MNP computes a corporate tax liability owing of \$371,405 which amount is due and payable to the CRA by December 31, 2023, failing which the CRA may charge interest and penalties on the balance owing. Upon MNP completing the corporate tax return, the Court Officer will make a remittance to the CRA to satisfy any outstanding liability.
21. Although the Holdco creditor claims process remains ongoing, the Liquidator has no reason to believe that the Holdco estate does not have sufficient funds to satisfy all claims which may be filed against Holdco. The Liquidator is also of the view that it is to the benefit of the Stakeholders to remit the Holdco sales tax and corporate income tax liabilities owing to the CRA as soon as possible to minimize interest and penalties thereon.

VIII. RECEIPTS AND DISBURSEMENTS

22. Copies of the Court Officer's interim statements of receipts and disbursements for Opco and Holdco are attached hereto as Appendix "F" and Appendix "G", respectively. As presented in the Opco Interim R&D and the Holdco Interim R&D, as at November 28, 2023 the Court Officer held \$72,554.17 and \$2,494,176.48 in trust for Opco and Holdco, respectively.

IX. PROFESSIONAL FEES

23. The Court Officer's fees for the period March 1, 2023 to November 28, 2023 are detailed in the affidavit of Matthew Marchand, sworn November 29, 2023 attached hereto as Appendix "H". The fees of the Court Officer include activities as set out in the Second Report, which activities have already been reviewed and approved by the Court on April 6, 2023. A copy of the Second Report (without appendices) is attached hereto as Appendix "I". The fees for the period encompass 134.4 hours at an average hourly rate of approximately \$457.99, for a total of \$61,554.50, prior to applicable taxes of \$8,002.09. The Court Officer is requesting the Court approve its total fees, inclusive of applicable taxes, in the amount of \$69,556.59.
24. The fees and disbursements of the Court Officer's legal counsel Fogler for the period March 1, 2023 to November 27, 2023 are detailed in the affidavit of Jonathan Gross, sworn November 29, 2023 attached hereto as Appendix "J". The fees for the period total \$28,936.08, inclusive of disbursements, plus applicable taxes of \$3,761.68. The Court Officer is requesting the Court approve Fogler's total fees and disbursements, inclusive of applicable taxes, in the amount of \$32,697.76.
25. The Court Officer has reviewed the fees and disbursements of Fogler and believe they are reasonable in the circumstances.
26. Notwithstanding the comparative difference in recoveries from the Opco Property and the Holdco Property, respectively, given the activities of the Court Officer detailed herein, the Court Officer believes it fair that Opco and Holdco equally split the Court Officer's fees detailed in paragraph 23 as well as the fees of Fogler detailed in paragraph 24.
27. The Liquidator also requests approval for an additional fee reserve of \$5,000 plus HST and \$2,000 plus HST from the Opco estate for the fees of the Court Officer and Fogler, respectively, to complete the administration of Opco up to the date of the assignment into bankruptcy.

X. DISCHARGE OF OPCO SALES OFFICER AND LIQUIDATOR

28. To the best of the Court Officer's knowledge, the Court Officer has completed its duties with respect to Opco as set out in the Sales Officer Appointment Order, including the realization of substantially all of Opco's assets. With respect to its duties with respect the liquidation of Opco, the Liquidator is of the view that it is expedient and appropriate that the Liquidator be authorized by the Court to make an assignment in bankruptcy on behalf of Opco. Further, given the anticipated assignment into bankruptcy of Opco, the Court Officer is of the view that its duties will be fully completed upon:
 - a) Paying all approved and outstanding fees of the Court Officer and Fogler with respect to Opco;
 - b) Remitting the HST Collected to the CRA;

- c) Filing an assignment into bankruptcy with respect to Opco;
- d) Upon BDO being appointed as Trustee of Opco, transferring all funds held in the Court Officer's trust account with respect to Opco to the Trustee; and
- e) Providing the Stakeholders with a final statement of receipts and disbursements with respect to Opco after all funds are transferred to the Trustee.

29. Once the Court Officer has completed these activities, the Court Officer proposes to file a discharge certificate with the Court certifying same to obtain a discharge and release over the assets, undertakings and property of Opco.

XI. RECOMMENDATIONS

30. Based on the foregoing, the Court Officer respectfully recommends that the Court issue an Order:

- a) Approving this Third Report including the actions and activities of the Court Officer set out herein;
- b) Approving the Opco Interim R&D;
- c) Approving the Holdco Interim R&D;
- d) Approving the fees and disbursements of the Court Officer and its legal counsel Fogler as set out in paragraphs 23 and 24 herein and detailed in the supporting fee affidavits appended hereto to be split equally between Opco and Holdco;
- e) Approving an additional fee reserve of \$5,000 plus HST and \$2,000 plus HST from the Opco estate for the fees of the Court Officer and Fogler, respectively, to complete the administration of Opco up to the date of the assignment into bankruptcy;
- f) Approving and authorizing the Liquidator, *nunc pro tunc*, to conduct a creditor claims process with respect to Holdco as detailed herein;
- g) Approving a claims bar order and setting a claims bar date of 90 days from the date of the claims bar order;
- h) Approving and authorizing the Sales Officer to remit the Personal Property Transaction HST with respect to Opco to the CRA;
- i) Approving and authorizing the Liquidator to voluntarily assign Opco into bankruptcy;
- j) That upon the filing by the Court Officer of a Discharge Certificate, discharging BDO as Court Officer of all of the assets, undertaking and properties of Opco; and
- k) That, upon the filing of the Discharge Certificate, releasing BDO from any and all liability it now has or may have of, or in any way arising out of the acts or omissions of BDO while acting in its capacity as Court Officer of Opco, save and except for any gross negligence or willful misconduct on the Opco Court Officer's part.

All of which is respectfully submitted on the 1st day of December, 2023.

BDO Canada Limited
in its joint capacity as Court-Appointed Sales Officer & Liquidator of
1475459 Ontario Inc. o/a End of the Roll
& Schick's Holdings Inc.
and not in its personal or corporate capacity

A handwritten signature in cursive script that reads "Matthew Marchand".

Matthew Marchand, CPA, CMA, CIRP, LIT
Senior Vice President