

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

BETWEEN:

INGRAM MICRO INC.

Applicants

- and -

MANAGING INFORMATION SYSTEMS 3 INC.

Respondents

**FIRST REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED,
IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF
MANAGING INFORMATION SYSTEMS 3 INC.**

August 1, 2024

Table of Contents

	<u>Page</u>
INTRODUCTION AND PURPOSE OF REPORT	1
Introduction	1
Purpose of this Report	1
Scope and Terms of Reference	2
ACTIVITIES OF THE RECEIVER	3
ASSETS	4
<i>Cash in bank</i>	4
<i>Accounts receivable</i>	4
<i>Computer equipment</i>	5
PRIORITY PAYABLES	6
SECURED CREDITORS AND SECURITY OPINION	7
INTERIM STATEMENT OF OPERATIONAL RECEIPTS AND DISBURSEMENTS	8
PROFESSIONAL FEES	8
DISCHARGE OF THE RECEIVER	9
RECOMMENDATIONS	10

Listing of Appendices

- Appendix I - Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice
- Appendix II - Receiver's Interim Statement of Receipts and Disbursements
- Appendix III - Fee Affidavit of Peter Naumis
- Appendix IV - Fee Affidavit of Jason D. Spetter

INTRODUCTION AND PURPOSE OF REPORT

Introduction

1. By Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (the “Court”) dated December 21, 2023 (the “Appointment Order”), BDO Canada Limited (“BDO”) was appointed as the Court-appointed receiver and manager (in such capacity, the “Receiver”) of the assets, undertakings and properties of Managing information Systems 3 Inc. (“MIS3” or the “Company”), pursuant to the application made by Ingram Micro Inc. (“Ingram”). A copy of the Appointment Order is attached as **Appendix “I”**.
2. The Company is a privately held company with its headquarters located in Toronto, Ontario. In addition, MIS3 had multiple shared satellite offices across Canada. Nilesh Mistry (“Neil”) is the sole director and officer of MIS3.
3. MIS3 provided business consulting and technology services to assist customers with their information technology modernization efforts.
4. In or around October 2022, Ingram established a credit line with MIS3 to finance products purchased by MIS3 from Ingram. MIS3 granted Ingram a general security agreement as security for the obligations and indebtedness due and owing to MIS3.
5. MIS3 subsequently defaulted in the amounts outstanding under the credit line.
6. This first report of the Receiver dated August 1, 2024 (the “First Report”), and other court materials and orders issued and filed in these receivership proceedings, are available on the Receiver’s case website at: <https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/mis3>.

Purpose of this Report

7. The purpose of this First Report is to update the Court on the Receiver’s activities following its appointment and is filed in support of the Receiver’s motion for the following Orders:
 - a) Approving this First Report and the conduct and actions of the Receiver to date;
 - b) Approving the fees and disbursements of the Receiver and its legal counsel, Spetter Zeitz Klaiman P.C. (“SZK”), as outlined herein and detailed in the supporting fee

affidavits appended hereto, including the Fee Accrual (defined below) and authorizing the Receiver to pay all approved and unpaid fees and disbursements;

- c) Approving the interim statement of receipts and disbursements of MIS3 from the date of the Receiver's appointment to July 26, 2024 (the "Interim R&D");
- d) Approving and authorizing a distribution of any surplus proceeds to Canada Revenue Agency ("CRA") on account of CRA's Priority Payable (defined below);
- e) Subject to completing any remaining outstanding matters discharging BDO as Receiver of the assets, undertakings and properties of the Company;
- f) Releasing the Receiver from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of its acts and omissions while acting in its capacity as Receiver; and
- g) Authorizing such further and other relief as counsel may advise and this Honourable Court may permit.

Scope and Terms of Reference

- 8. The First Report has been prepared for the use of this Court and the Company's stakeholders as general information relating to the Company and to assist the Court in making a determination on whether to grant the relief sought herein. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report for a purpose different than set out in this paragraph.
- 9. Except as otherwise described in this First Report:
 - (a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and

- (b) The Receiver has not conducted an examination or review of any financial forecast and projections in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information except as expressly stated herein.

- 10. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

ACTIVITIES OF THE RECEIVER

- 11. Since its appointment, the Receiver has, *inter alia*:

- a) served the Appointment Order upon Neil and demanded that he deliver the books and records of the Company to the Receiver;
- b) attended the Company's corporate head office at 100 King St West, Toronto, Ontario;
- c) attended the Company's satellite offices in Calgary, Edmonton, and other areas;
- d) contacted Bank of Nova Scotia ("BNS"), the Company's financial institution, and requested that BNS freeze the Company's accounts and remit surplus funds to the Receiver;
- e) Communicated with the Company's former employees;
- f) Communicated on numerous occasions with the Company's creditors;
- g) Held various communications with Neil and his legal representative;
- h) Communicated with the Company's former accountants with regards to the books and records;
- i) Issued collection letters to identified outstanding receivable accounts;
- j) prepared and mailed statutory notices pursuant to sections 245 and 246 of the *Bankruptcy and Insolvency Act* ("BIA"); and

k) communicated with Canada Revenue Agency (“CRA”).

ASSETS

Cash in bank

12. On December 21, 2023, the Receiver wrote to BNS and requested, among other things, placing the Company’s accounts on deposit only and remitting any surplus funds to the Receiver.
13. BNS remitted a total of \$22,230.09 to the Receiver.

Accounts receivable

14. At the time of the Receiver’s appointment, the Company’s available books and records reported accounts receivable of approximately \$165,963.
15. The Receiver issued collections letters to the customers identified having a receivable owing for the collection of these accounts.
16. The Receiver collected approximately \$55,412 in receivables. The remaining receivables were either deemed uncollectible or were paid to MIS3 prior to the Appointment Order.
17. Uncertain if the books and records were current, and on the suspicion of Ingram, on February 7, 2024, the Receiver subsequently issued letters to all customers reported in the books and records, whether showing as having an outstanding receivable or not, apprising them of these receivership proceedings and advising them to remit payment to the Receiver.
18. No customers responded to the Receiver’s February 7, 2024 correspondence.
19. On April 30, 2024, counsel for the City of Vaughan contacted the Receiver to advise that Neil had requested an MIS3 invoice be paid to him personally and mailed to his home address, advising the City of Vaughan “...the 100 King Street West Toronto ON office has not been renewed”.
20. The City of Vaughan invoice Neil was attempting to collect was a pre-bill for future work and was not an outstanding receivable.
21. The Receiver immediately contacted Neil and, among other things, put him on notice to immediately cease transacting as MIS3 and to forward an accounting to the Receiver and any correspondence he has had with MIS3 customers subsequent to the Appointment Order.

22. Additionally, the Receiver requested and obtained, various personal bank transaction statements from Neil to review for MIS3 related transactions. The Receiver identified two transactions as follows:

- Deposit of \$10,593.75 - This was determined to be a receivable of MIS3. The customer had issued payment to Neil, however, subsequently issued a stop payment on notice of these receivership proceedings and redirected payment to the Receiver; and
- Deposit of \$5,000 - According to Neil, “the payment represented a referral bonus from a technology partner”, however due to the receivership proceedings the bonus was canceled and the payor issued a stop payment.

23. On July 10, 2024, Neil filed a proposal to his creditors pursuant to the *Bankruptcy and Insolvency Act*.

Computer equipment

24. The Company operated out of various satellite shared office spaces and maintained two employees.

25. The Receiver identified certain computer equipment as the only assets of the Company.

26. An Apple MacBook Air Retina (2020) (“**MacBook**”) was in the possession of a former employee. The Receiver negotiated a sale of the MacBook to the former employee for \$750. The value was consistent with comparable used equivalents being sold.

27. Neil had advised the Receiver of certain computer equipment in his possession, which the Receiver took possession of, including:

I#	QTY	PIC	MAKE	MODEL	DESCRIPTION	S/N
1	1	1	INFOVISTA	IP E 40AX V2	IP ENGINE	N/A
2	1	2	CRADLEPOINT	IBR600C-150M-D	ROUTER	WA201400272929
3	1	3	CRADLEPOINT	IBR200-10M-B-AT	ROUTER	MM201800011152
4	1	4	CRADLEPOINT	E300-C18B	ROUTER	MM2000007600187
5	2	5-6	INFOVISTA	IPE 2000AX-T	IP ENGINE	N/A N0519A0203A0
6	2	7-8	INFOVISTA	IPE-2000AX-LX	IP ENGINE	N/A I0918C0120A0
7	1	9	APPLE	A2179	13" MONITOR, SPACE GRAY, MACBOOK AIR, 8GB RAM, 2020	FVHDF90QMNHP
8	1	10	APPLE	IMAC	COMPUTER	N/A
9	1		APPLE	IPAD	TABLET (NOT FUNCTIONING)	N/A

(“Computer Equipment”)

28. The Receiver requested an appraisal of the Computer Equipment from Platinum Asset Appraisals (“**Platinum**”). Platinum appraised the Computer Equipment on a forced liquidation value between \$3,745 - \$6,240.
29. The Receiver instructed Platinum to supplement its future auctions with the Computer Equipment.
30. As of this First Report, no pieces of the Computer Equipment have sold. In the event Platinum sells any or all of the Computer equipment in the future, the proceeds would be subject to the Priority Payable claim of CRA. The Receiver will direct any proceeds to the CRA to the extent of their priority trust claims.

PRIORITY PAYABLES

31. On December 27, 2023, the Receiver put Canada Revenue Agency (“**CRA**”) on notice of the Appointment Order.

32. On January 2, 2024, the CRA submitted its claim to the Receiver, evidencing a harmonized sale tax (“HST”) liability owing by MIS3 in the amount of \$549,652.16 (the “**Priority Payable**”). Additionally, on April 30, 2024, CRA submitted to the Receiver its claim for payroll deductions at source in the amount of \$1,470.78. CRA has confirmed the statutory trust components of the payroll deductions at source had been paid, and the outstanding amount is the Company’s portion which they are not claiming a priority against.
33. Additionally, the Wage Earner Protection Program Act (“**WEPP**”) creates a super priority for unpaid wage and vacation pay claims, up to \$2,000 per employee. Those claims rank as a priority charge ahead of secured creditors, over the current assets of an estate.
34. In accordance with the Appointment Order, claims under sec 81.4 of the BIA, being the \$2,000 super priority under WEPP, rank in priority to the Receiver’s accounts and will be paid in priority to the Receiver’s accounts.
35. The Receiver identified two former employees of MIS3 and put them on notice of WEPP. Only one former employee filed a claim under WEPP.
36. On July 16, 2024, Service Canada submitted its Statement of Account for WEPP payments, evidencing only unsecured portions. Accordingly, there are no priority claims for unpaid wages or vacation pay.

SECURED CREDITORS AND SECURITY OPINION

37. The Company’s first ranking secured creditor is Ingram. Other security registrations under the *Personal Property Security Registration System* include:
 - Synnex Canada Limited
 - Royal Bank of Canada
 - On Deck Capital Canada, Inc.
 - 9859870 Canada Inc.
 - Northpoint Commercial Finance Canada Inc.
 - Vault Credit Corporation
 - Bank of Nova Scotia
 - 11302078 Canada Ltd.; and
 - EFSA Capital Inc.

(collectively the “**Secured Creditors**”)

38. The Receiver did not engage SZK to undertake a security review of Ingram’s, or the Secured Creditors security. CRA’s Priority Payable claim far exceeds the total realization by the Receiver.
39. There will be insufficient funds to repay in full the Priority Payable. Accordingly, there will be no surplus funds available for distribution to Ingram or the Secured Creditors.

INTERIM STATEMENT OF OPERATIONAL RECEIPTS AND DISBURSEMENTS

40. Attached as **Appendix “II”** is a summary of the Receiver’s interim receipts and disbursements from the date of the Receiver’s appointment to July 30, 2024 (“**Interim R&D**”).
41. The Receiver is seeking the Court’s approval of the Interim R&D.

PROFESSIONAL FEES

42. Pursuant to paragraph 19 of the Appointment Order, any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees and disbursements of the Receiver and the fees and disbursements of the Receiver’s legal counsel, SZK, constitute part of the “Receiver’s Charge”. The fees and disbursements of the Receiver for the period December 21, 2023 to July 26, 2024 are detailed in the affidavit of Peter Naumis sworn July 29, 2024, a copy of which is attached hereto as **Appendix “III”**. The fees and disbursements of SZK for the period of December 21, 2023 to July 30, 2024 are detailed in the affidavit of Jason D. Spetter sworn July 30, 2024, a copy of which is attached as **Appendix “IV”**.
43. The detailed narratives contained in the invoices provide a fair and accurate description of the services provided and the amounts charged by BDO as Receiver. Included with the invoices is a summary of the time charges of partners and staff, whose services are reflected in the invoices, including the total fees and hours billed.
44. The Receiver’s fees for the period December 21, 2023 to July 26, 2024 encompass 67.20 hours at an average hourly rate of approximately \$409.22 for a total of \$27,499.25 prior to disbursements of \$438.91 and applicable taxes. The Receiver is therefore requesting that this Honourable Court approve total fees and disbursements inclusive of applicable taxes in the amount of \$31,570.12.

45. SZK's fees for the period December 21, 2023 to July 30, 2024 encompass 9.4 hours at an average hourly rate of approximately \$541.49 for a total of \$5,090.00 prior to disbursements of \$66.00 and applicable taxes. The Receiver is therefore requesting that this Honourable Court approve SZK's total fees and disbursements inclusive of applicable taxes in the amount of \$5,826.28.
46. The Receiver respectfully submits that the Receiver's fees and disbursements, and SZK's fees and disbursements, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Appointment Order.
47. Further, the Receiver and its legal counsel estimate they will incur additional fees and disbursements to complete the administration of the receivership proceeding, including but not limited to:
- i. Drafted and finalizing this First Report;
 - ii. Attending Court on August 6, 2024 in respect of the approval of this First Report;
 - iii. Determining and paying and Priority Payables;
 - iv. Filing the Receiver's HST returns to completion of this administration and follow up for receipt of any input tax credits;
 - v. Filing the Receiver's final report with the Office of the Superintendent of Bankruptcy;
 - vi. Distributing the surplus funds in the Receiver's hands to CRA; and
 - vii. Filing its discharge certificate to conclude its mandate.

The additional fees are not expected to exceed \$15,000, exclusive of disbursements and applicable HST (the "**Fee Accrual**").

DISCHARGE OF THE RECEIVER

48. The Receiver has substantially completed the administration of the receivership, subject to the residual matters set out below.

49. The Receiver therefore respectfully requests that the receivership proceedings then be terminated, and the Receiver be discharged, subject to the Receiver performing the following:

- i. Payment of a fee accrual of the Receiver and it's counsel, together with any final estate expenses;
- ii. Distributing the funds in the Receiver's hands;
- iii. Filing HST returns up to the Receiver's discharge;
- iv. Issuing the Receiver's final report and statement of receipts and disbursements pursuant to section 246(3) of the BIA; and
- v. Such further and other administrative and ancillary matters as may be necessary to complete the administration of the Receivership estate.

50. Upon completion of the above noted items, the Receiver will file a certificate with the Court confirming same (the "**Receiver's Certificate**"), whereupon the termination of the receivership proceedings and the discharge of the Receiver, and the accompanying release of the Receiver, would become effective.

RECOMMENDATIONS

51. The Receiver recommends and respectfully requests that this Honourable Court make an Order as requested in paragraph 7 above.

All of which is respectfully submitted this 1st day of August 2024.

BDO CANADA LIMITED
in its capacity as Court-Appointed Receiver
of Managing Information Systems 3 Inc.
and without personal or corporate liability



Name: Peter Naumis, B. Comm., CIRP, LIT
Title: Vice President