

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

THE HONOURABLE)

FRIDAY THE 12TH DAY

JUSTICE *Chiappetta*)

OF APRIL, 2019

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
2651033 ONTARIO INC LTD., 1496765 ONTARIO INC LTD. and
SUNSHINE PROPANE INC.

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3,
s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and
Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

APPROVAL AND VESTING ORDER

THIS MOTION, made by **RSM Canada Limited** in its capacity as the Court-appointed receiver and manager (the "Receiver") of all of the assets, undertakings and properties of 2495087 Ontario Inc. ("**2495087**"), including all proceeds thereof (collectively, the "**Property**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated the 30th day of January 2019, as amended on March 1, 2019 (the "**Sale Agreement**") between the Receiver and Amaethan Xavier, in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2678361 Ontario Inc. (the "**Purchaser**") and appended to the Report of the Receiver dated April 1, 2019 (the "**Report**"), and vesting in the Purchaser 2495087's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser, and such other counsel as were present,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of 2495087 and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Receiver's and all of 2495087's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated August 29, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Bruce (#3) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B

hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

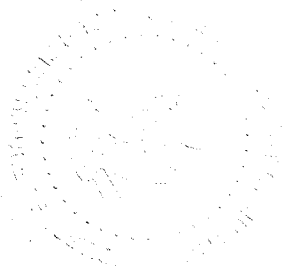
6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 2495087 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 2495087;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 2495087 and shall not be void or voidable by creditors of 2495087, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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.



J. G. P. S.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 15 2019

PER / PAR: *A*

Schedule A – Form of Receiver’s Certificate

Court File No. CV-18-00602537-00CL

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2495087 ONTARIO INC., 2496800 ONTARIO INC., 1527020 ONTARIO INC.,
1651033 ONTARIO INC LTD., 1496765 ONTARIO INC LTD. and
SUNSHINE PROPANE INC.

Respondents

RECEIVER’S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated August 29, 2018, RSM Canada Limited was appointed as the receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of 2495087 Ontario Inc. ("**2495087**"), including all proceeds thereof (collectively, the "**Property**").
- B. Pursuant to an Order of the Court dated April 12, 2019 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale made as of January 30, 2019, as Amended March 1, 2019 (the "**Sale Agreement**") between the Receiver and Amalethan Xavier, in trust for a corporation to be incorporated, which corporation was subsequently incorporated as 2678361 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Receiver's and 2495087's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied

or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement or the Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Date of Closing pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

RSM Canada Limited, solely in its capacity as Court-appointed Receiver and Manager of 2495087 Ontario Inc. and not in its personal or corporate capacity and without personal or corporate liability

Per: _____
Name: ►
Title: ►

Schedule B – Purchased Assets

All of the Receiver's (if any) and 2495087's right, title and interest in and to the Property and the Building (as defined in the Sale Agreement) including, without limitation, the following real property:

MUNICIPAL ADDRESS: 591-595 Goderich Street, Port Elgin, ON

LEGAL DESCRIPTION: LT 3, 1 BLK 9 PL 11; PT LT 2 BLK 9 PL 11 PT 1 & 3, 3R5963; PORT ELGIN

and

PT LT 2 BLK 9 PL 11 PT 2, 3R5963; PORT ELGIN

PINs: 33246-0421 (LT) and 33246-0422 (LT)

Schedule C – Claims to be deleted and expunged from title to Real Property

The following Instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. BR117857 registered on April 13, 2017, being a Charge in favour of Bank of Montreal in the principal amount of \$2,360,000.00.
2. Instrument No. BR117858 registered on April 13, 2017, being a Notice of Assignment of Rents (General) in favour of Bank of Montreal.
3. Instrument No. BR103386 registered on December 21, 2015, being a Notice of Lease in favour of CST Canada Co.
4. Instrument No. BR125522, registered on November 2, 2017, being an Application for Name Change Instrument re Instrument No. BR103386 from CST Canada Co. to Couche-Tard Inc.
5. Instrument No. BR125712 registered on November 8, 2017 being a Notice of Assignment of Lessee's Interest re Instrument No. BR103386 from Couche-Tard Inc. to Parkland Fuel Corporation.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property (as defined in the Sales Agreement) means:

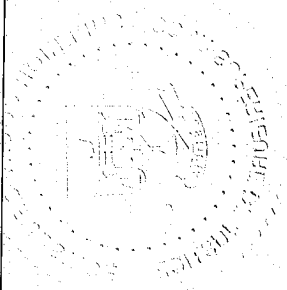
1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Property;

10. The following instruments registered on title to the Property:

- i. Instrument No. R297853 registered on September 10, 1993, being an Agreement with the Town of Port Elgin.
- ii. Instrument No. R299540 registered on November 22, 1993, being a Notice of Lease in favour of The TDL Group Ltd.
- iii. Instrument No. R303986 registered on June 2, 1994, being a Notice.
- iv. Instrument No. BR89646 registered on September 18, 2014, being an Application (General) with The TDL Group Co., The TDL Group Corp. and The TDL Group, being a Lease Extension & Amending Agreement relating to instrument No. R299540
- v. Instrument No. BR98005 registered on July 14, 2015 being a Notice with the Corporation of the Town of Saugeen Shores.
- vi. Instrument No. R75489 registered on March 19, 1970 being a bylaw.

BANK OF MONTREAL

Applicant



-and-

Court File No. CV-18-00602537-00CL
2495087 ONTARIO INC. et al.

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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