

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

**1112396 ONTARIO LIMITED, BLUEBERRY RECORDS INC, STANART HOLDINGS
INC. and FALVO HOLDINGS LIMITED**

Applicant

-and-

Z. DESJARDINS HOLDINGS INC., and ZACHARY DESJARDINS

Respondent

**IN THE MATTER OF AN APPLICATION 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*,
R.S.O. 1990, c. C.43, AS AMENDED**

FIRST REPORT OF THE INTERIM MONITOR

OCTOBER 23, 2023



Table of Contents

- I. INTRODUCTION 1
- II. PURPOSE OF REPORT 1
- III. TERMS OF REFERENCE 1
- IV. BACKGROUND 2
- V. BUSINESS INTERRUPTION AND THE POTENTIAL DISSIPATION OF ASSETS 3
- VI. CONCLUSION 5

I. INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (the “**Court**”) dated October 13, 2023 (the “**Order**”), which Order was consented to by the parties, RSM Canada Limited was appointed as interim monitor (the “**Interim Monitor**”), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated of Z. Desjardins Holdings Inc. (the “**Debtor**”), including all proceeds thereof (the “**Property**”).
2. The Order authorizes the Interim Monitor to, among other things, monitor the Property for the purposes of ensuring the continued preservation and maintenance of the Property. The Order, in part, was to ensure the continued preservation of the Property and that the Debtor’s operation of the business would continue in the ordinary course.

II. PURPOSE OF REPORT

3. The purpose of this report (the “**First Report**”) is to:
 - a) report to the Court on the Interim Monitor’s observations for the period from the date of the Order to the date hereof in respect to the Property; and
 - b) seek the Court’s advice and direction with respect to the Property and the Interim Monitor’s role in these proceedings.

III. TERMS OF REFERENCE

4. In preparing this report and making the comments herein, the Interim Monitor has relied upon information provided to it by its agents (the “**Information**”). Certain of

the information contained in this First Report may refer to, or is based on, the Information.

5. Unless otherwise stated, all dollar amounts contained in the Pre-filing Report are expressed in Canadian dollars.

IV. BACKGROUND

6. The Debtor is the registered owner of three properties located at the following municipal addresses (collectively, the “**Real Properties**”):

- a) 227 Victoria Street, Clinton, Ontario (the “**Clinton Property**”);

- b) 51 Main Street North, Exeter, Ontario (the “**Exeter Property**”); and

- c) 71146 Bluewater Highway, Grand Bend, Ontario (the “**Grand Bend Property**”).

7. The Real Properties are designated mixed use and commercial properties, which the Debtor has been operating as gas stations with convenience stores attached. The Grand Bend Property contains a gas bar, commercial plaza, and residential apartment.

8. On October 13, 2023, the Applicants and Respondents (collectively, the “**Parties**”) consented to the appointment of the Interim Monitor in order to facilitate the flow of critical information regarding the Real Properties and the business located thereon. The Order was drafted with the input of all parties, with a view to ensuring that the Property representing the collateral of the Applicant lenders does not

dissipate prior to the application to appoint a Receiver, currently scheduled to be heard on January 31, 2024.

9. At the time the Parties consented to the Order appointing the Interim Monitor, it was understood that the gas station and convenience store businesses at the Real Properties were operating in the normal course. Accordingly, the Interim Monitor would be required to, among other things, monitor the cash receipts and disbursements of these businesses, approve cash disbursements greater than \$1,000, and attend on site periodically to inspect the Property.
10. On October 18, 2023, a representative of the Interim Monitor attended on site at the Real Properties in order to gather preliminary information relating to the Interim Monitor's duties. Upon attending at the Real Properties, the Interim Monitor discovered that all three gas stations and convenience stores were closed and did not appear to be operational. The doors were locked, all electronic pricing signage for the gas stations was turned off, and no employees could be located on site.
11. It is the understanding of the Interim Monitor, that the last fuel delivery to the three gas stations was made on or about October 3, 2023.

V. BUSINESS INTERRUPTION AND THE POTENTIAL DISSIPATION OF ASSETS

12. The Interim Monitor's function is to monitor the Debtor's Property and determine if there are any risks that could lead to the dissipation or degradation of the assets of the Debtor subject to the lender's security, and, if so, report to the Court accordingly.

13. The Interim Monitor consulted with an industry expert (the “**Expert**”) regarding the potential risks associated with the business interruption of the gas station operations. The primary concerns include (without limitation) the following:

a) Product and fuel spoilage – According to the Expert, fuel that remains stored in tanks for a prolonged time can spoil and may need to be purged. Not only would the value of the fuel be lost, but there would also be an additional cost of approximately \$2.50 to \$3.00 per liter to dispose of the spoiled fuel in compliance with environmental and health & safety regulations. With respect to the convenience store operations, it is also possible that inventory may expire or otherwise become unsaleable if the business remains closed.

b) Health and Safety – The Interim Monitor contacted the Technical Standards and Safety Authority (“**TSSA**”) to inquire about the status of the Debtor’s operating licenses for the three properties. The TSSA is the regulatory body that is responsible for licensing all gas station operations in Ontario. According to a TSSA representative, the gas stations located at the Clinton Property and the Exeter Property currently have operating licenses in good standing; however, the TSSA license for the gas station located at the Grand Bend Property expired several months ago. It is unclear whether the license was revoked by TSSA or not renewed by the Debtor. It is the Interim Monitor’s understanding that the Grand Bend station cannot be operated without a license, and it may be difficult to renew the license depending on the reason(s) for the license revocation. If the Debtor is unable to obtain an

operating license for this location, that alone will likely have a significant negative impact on the fair market value of the Grand Bend Property.

c) Cessation of operations – The Debtor appears to have ceased operating the gas station and convenience store businesses at each of the three Real Properties. As more time passes, customers of the existing operations may adjust their routines and frequent other location from which to purchase fuel and other items. If the businesses remain closed for a prolonged period of time, there is a risk of losing market share, diminishing the value of the underlying Property, to the detriment of all stakeholders.

14. In view of the foregoing, the Interim Monitor is of the view that there is strong evidence as to the dissipation of the Property and that value of the lender's collateral is being eroded. The Debtor has not provided reasons to the Interim Monitor sufficient to justify the complete business cessation of the three properties, nor was the revocation of the TSSA license of the Grand Bend location disclosed to the Interim Monitor, this Court, or to the Applicants.

VI. CONCLUSION

15. It is the Interim Monitor's position that the cessation of operations at all of the gas stations and convenience stores as well as the revocation of the Grand Bend TSSA license represents a material change in circumstance that should be addressed by the Court. Accordingly, the Interim Monitor seeks the Court's advice and direction with respect to the Property, preservation thereof, and the Interim Monitor's role in these proceedings.

All of which is respectfully submitted to this Court as of this 23rd day of October, 2023.

RSM CANADA LIMITED

Solely in its capacity as Interim Monitor
of Z. Desjardins Holdings Inc.,
and not in its personal capacity

A handwritten signature in black ink, appearing to read 'B. A. Tannenbaum', with a long horizontal flourish extending to the right.

Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President