

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

THE HONOURABLE) WEDNESDAY, THE 8th DAY
)
JUSTICE CAVANAGH) OF DECEMBER, 2021

BETWEEN:

**CHOICE PROPERTIES LIMITED PARTNERSHIP, by its
general partner CHOICE PROPERTIES GP INC.**

Applicant

- and -

**PENADY (BARRIE) LTD., PRC BARRIE CORP.
and MADY (BARRIE) INC.**

Respondents

APPLICATION UNDER SECTION 243 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

DISCHARGE ORDER

THIS MOTION, made by RSM Canada Limited (“**RSM**”), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* of (a) the assets, undertakings and properties of Penady (Barrie) Ltd., and (b) the interest of PRC Barrie Corp. and Mady (Barrie) Inc., in the commercial rental property located at the intersection of Cundles Road and Duckworth Avenue in the City of Barrie, which forms part of the North Barrie Crossing Shopping Centre and all assets, undertakings and properties related thereto (collectively, the "**Property**"), for an order (i) abridging the time for service of the Receiver’s Notice of Motion and Motion Record herein, (ii) approving the Third Report of the Receiver dated December 2, 2021 (the "**Third Report**") and the activities described therein, (iii) approving the Receiver’s payment to Canada Revenue Agency

(“**CRA**”) of \$134,522.87 in respect of CRA’s deemed trust claim amount, in full and final satisfaction of any CRA deemed trust claims against the Respondents relating to the Property, (iv) authorizing the Receiver to pay to the Applicant, Choice Properties Limited Partnership (“**CHP**”), the CHP Distribution (as defined below) as a reduction of the Receiver’s Certificate Obligations (as defined below), (v) releasing the Receiver and RSM from the Remaining Receiver’s Certificate Obligations (as defined below), (vi) discharging RSM from the powers, duties and obligations attendant to its appointment as Receiver upon the Receiver filing a certificate with the Court confirming that the Receiver has completed the Remaining Duties (as defined below) and authorizing the Receiver to complete certain incidental duties following the discharge of the Receiver, (vii) authorizing the Receiver to pay to CHP any additional funds the Receiver may receive in respect of the receivership administration, whether prior to or following the Receiver’s discharge, provided that the total amounts paid to CHP do not exceed the Respondents’ indebtedness to CHP and the value of the Remaining Receiver’s Certificate Obligations as of the date hereof, and (viii) approving the Receiver’s Interim Statement of Receipts and Disbursements for the period March 27, 2020 to November 30, 2021, and the professional fees of the Receiver and its counsel Blaney McMurtry LLP (“**Blaney**”), was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Third Report, and on hearing the submissions of counsel for the Receiver, the Applicant, and Crown Private Capital Management Inc., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Eric Golden sworn December 7, 2021, filed,

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion dated December 2, 2021 (the “**NOM**”), and related motion material filed in support of that NOM, including the Receiver’s Motion Record dated December 2, 2021 (collectively, the “**Motion Material**”), be and is hereby abridged, that service of the NOM and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS** that the Third Report, and the activities of the Receiver described therein, be and is hereby approved.

3. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period from March 27, 2020 to November 30, 2021, as set out in Appendix "O" to the Third Report (the "**R&D**"), be and is hereby accepted and approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver from August 1, 2020 to November 30, 2021, and estimated to completion as set out in paragraph 46 of the Third Report (collectively, the "**Receiver Accounts**"), and of Blaney from August 1, 2020 to November 30, 2021, and estimated to completion as set out in paragraph 47 of the Third Report (collectively, the "**Blaney Accounts**"), be and are hereby approved.

5. **THIS COURT ORDERS** that the Receiver's payment to CRA of \$134,522.87 in full and final satisfaction of any CRA deemed trust claims against the Respondents relating to the Property (the "**Deemed Trust Amount**") be and is hereby approved, and the Receiver is hereby authorized to pay the Deemed Trust Amount to CRA.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to pay to CHP, net of the Deemed Trust Amount and the unpaid accounts of the Receiver and Blaney, and as a reduction of the amounts owing under the Receiver Certificates issued in this receivership including accrued interest thereon (the "**Receiver's Certificate Obligations**"), the excess of cash receipts over disbursements the Receiver is expected to be holding as of the date of such payment to CHP, which distribution, as of the date of this Order, is estimated to be approximately \$1,026,000 (the "**CHP Distribution**").

7. **THIS COURT ORDERS** that following the payment of the CHP Distribution set out in paragraph 6 above, the Receiver and RSM shall be released from the unpaid balance of the Receiver's Certificate Obligations including any remaining accrued interest thereon (the "**Remaining Receiver's Certificate Obligations**").

8. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to pay to CHP any additional funds the Receiver may receive in respect of the receivership administration or the Property after November 30 2021, provided that the total amounts paid to CHP do not exceed the Respondents' indebtedness to CHP and the value of the Remaining Receiver's Certificate Obligations as of the date hereof (the "**CHP Surplus Distributions**").

9. **THIS COURT ORDERS** that upon the Receiver filing with this Court a certificate substantially in the form appended hereto as Schedule “A” certifying that the Receiver has completed the following remaining duties as of the date of the Third Report (the “**Remaining Duties**”):

- (a) paying to CRA the Deemed Trust Amount;
- (b) paying the unpaid portion of the Receiver’s Accounts and the Blaney Accounts;
- (c) paying to CHP the CHP Distribution;
- (d) filing the Receiver’s HST returns; and
- (e) preparing and filing the Final Statement of Receiver pursuant to section 246(3) of the *Bankruptcy and Insolvency Act*,

the Receiver shall be discharged as Receiver of the Property, provided however that notwithstanding its discharge as Receiver herein, RSM shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all authorizations, approvals, protections and stays of proceedings in favour of RSM in its capacity as receiver.

10. **THIS COURT FURTHER ORDERS** that RSM is hereby forever released and discharged from any liability that RSM now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of RSM while acting in its capacity as Receiver including for certainty, in carrying out the Remaining Duties, save and except for any gross negligence or willful misconduct on the Receiver’s part. Without limiting the generality of the foregoing, RSM is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the receivership, save and except for any gross negligence or willful misconduct on the Receiver’s part.

11. **THIS COURT FURTHER ORDERS** that notwithstanding its discharge herein, RSM may perform such incidental duties as may be required by it as Receiver to complete its obligations pursuant to its appointment as Receiver including, for certainty, carrying out the Remaining Duties, and RSM shall be forever released and discharged from any and all liability related to such incidental duties, save and except for any gross negligence or willful misconduct on the Receiver’s part.

12. **THIS COURT ORDERS** that notwithstanding Rule 59.05, this order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rule 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

Schedule "A"

Court File No. CV-20-00637682-00CL

**CHOICE PROPERTIES LIMITED PARTNERSHIP, by its
general partner CHOICE PROPERTIES GP INC.**

Applicant

- and -

**PENADY (BARRIE) LTD., PRC BARRIE CORP.
and MADY (BARRIE) INC.**

Respondents

APPLICATION UNDER SECTION 243 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

RECEIVER'S DICHARGE CERTIFICATE

A. By Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 25, 2020 as subsequently amended (the "**Receivership Order**"), RSM Canada Limited was appointed receiver and manager (the "**Receiver**") without security, of all of the assets, undertakings and properties of Penady (Barrie) Ltd. ("**PBL**") acquired for, or used in relation to a business carried on by PBL, including all proceeds thereof, and the interest of PRC Barrie Corp. and Mady (Barrie) Inc. in the Barrie Property (as defined in the Third Report of the Receiver (the "**Property**").

B. Pursuant to an Order of the Court dated December 8, 2021 (the "**Discharge Order**"), the Court provided for the discharge of the Receiver upon certification that the Receiver has completed the Remaining Duties, as defined in and approved by the Discharge Order.

THE RECEIVER CERTIFIES it has completed the Remaining Duties.

**RSM CANADA LIMITED, in its capacity as
Court Appointed Receiver and Manager of
Penady (Barrie) Ltd. and of certain of the
assets of PRC Barrie Corp. and Mady (Barrie)
Inc., and not in its personal capacity**

Per: _____

Name:

Title:

CHOICE PROPERTIES LIMITED PARTNERSHIP, ET AL.
Applicant

-and-

Court File No. CV-20-00637682-00CL
PENADY (BARRIE) LTD., ET AL.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**
Proceeding commenced at Toronto

**ORDER
(Discharge of Receiver)**

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in its capacity as Court-appointed Receiver