

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)
JUSTICE HAINES)
FRIDAY, THE 14TH
DAY OF FEBRUARY, 2020

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended
and Section 101 of the *Courts of Justice Act*, as amended

ORDER
(Discharge Order and Other Relief)

THIS MOTION, made by RSM Canada Limited (“**RSM**”), in its capacity as Court-appointed receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties of Fingal Properties Holdings Inc. (the “**Debtor**” or “**Fingal**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report of the Receiver dated October 10, 2019 (the “**Fourth Report**”), Fifth Report of the Receiver dated February 4, 2020 (the “**Fifth Report**”) and appendices thereto, the affidavit of Bryan Tannenbaum sworn October 10, 2019 (the “**First**

Tannenbaum Affidavit”), the affidavit of Bryan Tannenbaum sworn February 4, 2020 (the **“Second Tannenbaum Affidavit”**), the affidavit of R. Brendan Bissell sworn October 10, 2019 (the **“First Bissell Affidavit”**) and the affidavit of R. Brendan Bissell, sworn February 4, 2020 (the **“Second Bissell Affidavit”**), and on hearing the submissions of counsel for the Receiver, and such other counsel as were present as shown on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Katie Parent sworn February 5, 2020, filed,

SERVICE

1. **THIS COURT ORDERS** that, to the extent required, the time for service of the Motion Record in respect of this motion and the Fifth Report is hereby abridged and that service is hereby validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

APPROVAL OF RECEIVER’S REPORT, ACTIVITIES AND FEES

2. **THIS COURT ORDERS** that the Fifth Report and the activities described in such Report be and are hereby approved, provided, however, that only the Receiver in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

3. **THIS COURT ORDERS** that the professional fees and disbursements (inclusive of HST) of the Receiver in the amount of \$76,955.26 for the period June 1 to September 30, 2019 as set out in the First Tannenbaum Affidavit, and the payment of such fees by the Receiver, be and are hereby approved.

4. **THIS COURT ORDERS** that the professional fees and disbursements (inclusive of HST) of the Goldman Sloan Nash & Haber LLP (“**GSNH**”), legal counsel for the Receiver, in the amount of \$97,310.57 for the period June 1 to September 30, 2019 as set out in the First Bissell Affidavit, and the payment of such fees by the Receiver, be and are hereby approved.

5. **THIS COURT ORDERS** that the professional fees and disbursements (inclusive of HST) of the Receiver in the amount of \$1,137.35 for the period October 1 to November 15, 2019, as reduced in accordance with the agreement with the first mortgagee, First Source Mortgage Corporation (“**First Source**”), and the second mortgagee, Moya Financial Credit Union Limited (“**Moya**”) and as set out in the Fifth Report and the Second Tannenbaum Affidavit, be and are hereby approved.

6. **THIS COURT ORDERS** that the professional fees and disbursements (inclusive of HST) GSNH, legal counsel for the Receiver, in the amount of \$54,917.81 for the period October 1 to November 15, 2019, as reduced in accordance with the agreement with First Source and Moya and as set out in the Fifth Report and the Second Bissell Affidavit, be and are hereby approved.

7. **THIS COURT ORDERS** that the professional fees and disbursements (inclusive of HST) of the Receiver in the amount of \$8,475.00, including the estimate of additional fees and disbursements of the Receiver to complete the receivership proceeding, as set out in the Second Tannenbaum affidavit, be and are hereby approved.

8. **THIS COURT ORDERS** that the professional fees and disbursements (inclusive of HST) of GSNH in the amount of \$11,311.23, including the estimate of additional fees and disbursements of GSNH to complete the receivership proceeding, as set out in the Second Bissell Affidavit be and are hereby approved.

DISTRIBUTION

9. **THIS COURT ORDERS** that the following payments by the Receiver are hereby authorized and directed:

- a. \$9,612.35 to the Receiver and \$66,229.04 to GSNH in payment of their accounts as approved herein;
- b. \$50,000 to Moya, as a secured creditor, or as Moya may otherwise direct, in writing;
- c. Any additional funds available for distribution not attributable to the foregoing \$50,000 distribution payment to Moya, shall be paid to First Source up to a maximum amount of \$137,927 in addition to the initial distribution payment made to First Source on November 12, 2019, so that the total distributions to First Source shall not exceed in the aggregate \$5,878,772;
- d. Any excess funds available for distribution if First Source has been paid the claim amount of \$5,878,772, shall be paid to Moya.

DISCHARGE

10. **THIS COURT ORDERS THAT** upon the Receiver making the payments referred to in paragraph 9 and upon the Receiver filing a certificate in the form set out as Schedule "A" hereto certifying that administration of the receivership of the assets, undertakings and properties of the Debtor and all of the remaining matters in these proceedings as set out in the Fifth Report have been completed, the Receiver shall be discharged as Receiver of the assets, undertakings and properties of the Debtor, provided, however, that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required

to complete the administration of the receivership herein, and (b) the Receiver and its counsel shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of RSM in its capacity as Receiver.

11. **THIS COURT ORDERS AND DECLARES** that RSM is hereby released and discharged from any and all 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 herein, save and except for any gross negligence or wilful 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 within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

12. **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.



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

FEB 14 2020

PER / PAR: *JS*

Schedule "A"

Court File No. CV-18-598008-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended
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DISCHARGE CERTIFICATE

RECITALS

- A. Pursuant to the Appointment Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 12, 2018, RSM Canada Limited was appointed as Receiver (the "**Receiver**") of the assets, undertakings and properties of Fingal Properties Holdings Inc. (the "**Debtor**").
- B. Pursuant to the Order of this Court dated the [14] day of February, 2020 (the "**Discharge Order**"), the Receiver shall be discharged upon the filing of this Discharge Certificate.
- C. Unless otherwise indicated herein, capitalized terms used in this Discharge Certificate shall have the meanings given to them in the Discharge Order.

THE RECEIVER CERTIFIES the following:

- 1. All HST refunds relating to the payments of the Receiver's and its counsel professional services have been received by the Receiver;
- 2. The distributions of funds as contemplated in Paragraph [9] of the Discharge Order have been completed.

3. The administration of the receivership of the assets, undertakings and properties of the Debtor and remaining receivership activities as described in the Fifth Report of the Receiver dated February • , 2020, have been completed.
4. The payment of fees and disbursements of the Receiver and of its legal counsel as approved by the Discharge Order have been completed.

DATED at Toronto, Ontario this ____ day of _____, 2020.

RSM Canada Limited, in its capacity as the Receiver of the assets, undertakings and properties of Fingal Properties Holdings Inc., and not in its personal capacity

Per:

Name: Bryan A. Tannenbaum
Title: President

M.O.S. MORTGAGEONE SOLUTIONS LTD.

and

FINGAL PROPERTIES HOLDINGS INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

**ORDER
(Discharge Order and Other Relief)**

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