

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 20TH DAY
)
JUSTICE CAVANAGH) OF DECEMBER, 2022

APPLICATION UNDER S. 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

BETWEEN:

BANK OF MONTREAL

Applicant

and

BRANT INSTORE CORPORATION

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”) in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Brant Instore Corporation (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Purchase Agreement**”) between the Receiver and 1000369798 Ontario Inc. (the “**Purchaser**”) dated December 20, 2022

and appended in redacted form to the Pre-Filing Report of KSV in its capacity as proposed Receiver to be filed in these proceedings (the “**Report**”), and included, in unredacted form, in the confidential appendices to the Report (collectively, the “**Confidential Appendices**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Purchase Agreement (the “**Purchased Assets**”), was heard this day by Zoom judicial video conference.

ON READING the Report and the Confidential Appendices, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Purchaser, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Samantha Hans sworn December 9, 2022, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. 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 Debtor's right, title and interest in and to the Purchased Assets described in the Purchase Agreement 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 Receivership Order of the Honourable Justice Cavanagh dated December 20, 2022; (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 “B”** hereto (all of which are collectively referred to as the “**Encumbrances**) 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 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.

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

5. **THIS COURT ORDERS** that, notwithstanding the provisions of subsection 171(3) of the *Business Corporations Act* (Ontario) (the "**OBCA**"), the Receiver be and is hereby authorized and directed, upon filing of the Receiver's Certificate, to complete, execute and file articles of amendment for and on behalf of the Debtor and any officer and director of the Debtor (such articles of amendment to be deemed to have been signed by a director or an officer of the Debtor and executed in accordance with the OBCA when so signed by the Receiver as directed by this Court) for the sole purpose of changing the corporate name of the Debtor to 1886695 Ontario Inc. (and such amendment shall be deemed to have been duly authorized by Section 168 of the OBCA without any shareholder or director resolution approving such amendment being required), and this Court hereby directs the Director (as defined in the OBCA) to endorse thereon a certificate of amendment upon receipt from the Receiver of two duplicate originals of such articles of amendment together with the prescribed fees and any other required documents under the OBCA (which the Receiver be and is hereby authorized and directed to complete, execute and file for and on behalf of the Debtor and any officer and director of Debtor, if and as required) except for any such documents as have been dispensed or otherwise dealt with pursuant to the deeming provisions contained herein.

6. **THIS COURT ORDERS** that, upon filing of the articles of amendment changing the name of the Debtor in accordance with paragraph 5 above and the Receiver filing with this Court

and written confirmation that such name change has been effected, the title of these proceedings shall be and is hereby amended to the following:

APPLICATION UNDER S. 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

BETWEEN:

BANK OF MONTREAL

Applicant

and

1886695 ONTARIO INC.

Respondent

and the registrar is hereby directed to change and modify its court records as necessary so as to reflect this change in the title of proceeding.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. **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 the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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 the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.

SEALING

9. **THIS COURT ORDERS** that:

- (a) Confidential Appendix 1, Confidential Appendix 2 and Confidential Appendix 3 to the Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened on or after the date that is three months following the date of filing of the Receiver's Certificate; and
- (b) Confidential Appendix 4 to the Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

INTERIM DISTRIBUTION

10. **THIS COURT ORDERS** that, subject to maintaining sufficient reserves to satisfy the priority claims described in the Report and to complete the administration of the receivership, the Receiver is authorised to pay:

- (a) the Success Bonus as defined and described in the Report; and
- (b) the remaining proceeds of the Transaction and any monies that come into the estate at a later date, to the Bank of Montreal up to the amount of the Debtor's indebtedness owing to the Bank of Montreal.

GENERAL

11. **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.

12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order and is enforceable without the need for entry or filing.

A digital signature in blue ink, appearing to read 'Cavanagh', is enclosed in a light blue rectangular box.

Digitally signed by
Mr. Justice Cavanagh

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-22-00691546-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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APPLICATION UNDER S. 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

BETWEEN:

BANK OF MONTREAL

Applicant

and

BRANT INSTORE CORPORATION

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated December 20, 2022, KSV Restructuring Inc. was appointed as the receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Brant Instore Corporation (the “**Debtor**”).

B. Pursuant to an Order of the Court dated December 20, 2022, the Court approved the asset purchase agreement made as of December 20, 2022 (the “**Purchase Agreement**”) between the Receiver and 1000369798 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’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 Article 7 of the Purchase Agreement have been satisfied or waived by the Receiver and the

Purchaser; and (iii) the transaction contemplate by the Purchase Agreement (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 Purchase Agreement.

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 Closing Date pursuant to the Purchase Agreement;
2. The conditions to Closing as set out in Article 7 of the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., in its capacity as Receiver of the undertaking, property and assets of BRANT INSTORE CORPORATION, and not in its personal capacity

Per: _____

Name:

Title:

Schedule "B" – Claims to be deleted and expunged

NONE.

BANK OF MONTREAL
Applicant

- and -

BRANT INSTORE CORPORATION
Respondent

Court File No. CV-22-00691546-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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