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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

APPLICATION UNDER SUBSECTION 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

B E T W E E N :

BANK OF MONTREAL

Applicant

- and -

BRANT INSTORE CORPORATION

Respondent

FACTUM OF THE RECEIVER
Returnable December 20, 2022

December 14, 2022

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PART I – INTRODUCTION

1. This factum is filed by KSV Restructuring Inc., the proposed receiver (the "**Proposed Receiver**") of Brant Instore Corporation (the "**Debtor**"), in support of the Proposed Receiver's motion for an order (the "**Approval and Vesting Order**") containing, in substance, the following requested relief:

   (a) approval of an agreement of purchase and sale (the "**Purchase Agreement**") to be entered into by the Proposed Receiver and 1000369798 Ontario Inc. (the "**Purchaser**") for the purchase and sale of all of the Debtor's and Receiver's (if appointed) right, title and interest in and to the Debtor's rights, properties and assets which are used in, related to or otherwise associated with the business carried on by the Debtor, subject to certain exclusions (the "**Transaction**");

   (b) subject to maintaining sufficient reserves, authorization and direction for the Receiver, if appointed, to make:

      (i) distributions to certain key employees (the "**Key Employees**") of the Debtor pursuant to a success bonus plan (the "**Success Bonus Plan**") in priority to the Bank of Montreal ("**BMO**"); and

      (ii) a distribution of the net proceeds of the Transaction and any monies that come into the estate at a later date, to BMO up to the amount of the Debtor's indebtedness owing to BMO; and

   (c) sealing confidential appendices 1-4 (the "**Confidential Appendices**" and each a "**Confidential Appendix**") of the Prefiling Report of the Proposed Receiver dated

December 12, 2022 (the "**Prefiling Report**") for the specific periods of time contained in the Approval and Vesting Order as it relates to appendices 1-3 and further order of the Court as it relates to appendix 4.

PART II – THE FACTS

A. Background

2. The Debtor is a privately owned corporation, operating from two leased locations in Brantford, Ontario. The Debtor provides a wide range of print solutions to North American retailers, including point-of-purchase signage, merchandising displays, banners, floor graphics, three-dimensional point-of-sale displays and other special print orders. Currently, 139 people are employed with the Debtor, including 97 hourly workers who are members of the National Automotive, Aerospace, Transportation and General Workers Union of Canada.[1]

3. Due to challenges faced by brick-and-mortar retailers in recent years, including the rise of e-commerce, and more recently the COVID-19 pandemic, the Debtor has suffered declining sales and the loss of key customers, resulting in continued financial losses, which, since 2019, total approximately $16 million.[2]

4. BMO is the Debtor's primary secured creditor. BMO has provided various credit facilities to the Debtor, including a revolving credit facility and a capital expenditure facility. The Debtor has been in default of its primary credit agreement with BMO since

[1] Prefiling Report at pages 4 and 5, Motion Record at Tab 4.
[2] Prefiling Report at page 5, Motion Record at Tab 4.

at least the first quarter of 2020. As at December 6, 2022, BMO's advances to the Debtor total $13,022,365, with interest and costs continuing to accrue.[3]

5. The Debtor and BMO entered into a series of forbearance agreements and amendments and, after default thereunder, entered into a support agreement pursuant to which BMO agreed to continue to provide credit to the Debtor while it conducted a Sale and Investment Solicitation Process (the "**SISP**"), which was performed by New Direction Partners, LLC ("**NDP**"), a US investment bank with experience in the printing industry.[4]

6. BMO has continued to support the Debtor since the date of the first forbearance agreement, notwithstanding the Debtor's ongoing under-performance and its continuing and new defaults. However, absent the proposed Transaction closing, BMO is not prepared to continue to fund the Debtor's business and operations.[5]

B. The Prior SISP

7. NDP provides consulting services for owners and managers of businesses in various industries, with a focus on printing companies. NDP was retained by the Debtor to carry out the SISP, which commenced on August 19, 2022. NDP assembled a list of 47 prospective purchasers located in Canada and the United States. Interested parties signed nondisclosure agreements and performed due diligence, including the Purchaser. The Purchaser submitted a binding letter of intent (the "**LOI**") in October, 2022, which was

[3] Prefiling Report at pages 5 and 6, Motion Record at Tab 4.
[4] Prefiling Report at page 6, Motion Record at Tab 4.
[5] Prefiling Report at pages 6 and 14, Motion Record at Tab 4.

determined to be the best letter of intent received in the SISP. Upon receipt of the LOI, the Debtor and the Purchaser negotiated the Purchase Agreement. The Purchase Agreement was signed by the Debtor on December 12, 2022. The Purchase Agreement requires that the Transaction must close by December 30, 2022.[6]

8. The Proposed Receiver has a longstanding prior involvement with the Debtor. In February 2020, the Proposed Receiver was retained as BMO's financial advisor with respect to BMO's loans to the Debtor. As financial advisor, the Proposed Receiver reviewed the Debtor's financial information, prepared an estimate of the realizable value of the Debtor's assets, reviewed and assessed the reasonableness of the Debtor's financial projections and monitored the Debtor's financial performance.[7]

9. On January 5, 2021, with BMO's consent and support, the Proposed Receiver was retained by the Debtor to act as the Debtor's Chief Restructuring Advisor ("**CRA**"). Thus, the Proposed Receiver has obtained significant knowledge of the Debtor's business and operations during its mandates.[8]

10. The Proposed Receiver has reviewed the books and records of the Debtor, held discussions with BMO and certain representatives of the Debtor, and participated in the negotiation and drafting of the Purchase Agreement. According to a liquidation analysis conducted by the Proposed Receiver (the "**Liquidation Analysis**"), the purchase price

[6] Prefiling Report at pages 6 and 10, Motion Record at Tab 4.
[7] Prefiling Report at page 2, Motion Record at Tab 4.
[8] Prefiling Report at page 2, Motion Record at Tab 4. Note: this retainer does not preclude the Proposed Receiver from acting as a court-officer in a court-supervised insolvency proceeding of the Debtor.

contemplated by the Purchase Agreement materially exceeds the liquidation value of the Debtor's business and assets.[9]

11. The Proposed Receiver believes that the Transaction is in the best interest of the Debtor and its stakeholders, including its employees, and that the Transaction should be completed on an urgent basis.

PART III – ISSUES AND THE LAW

12. The substantive issues to be adjudicated by the Court on the Proposed Receiver's motion are:

    (a) the granting of the Approval and Vesting Order;

    (b) the authorization to make the payments contemplated by the Success Bonus Plan and distributions to BMO; and

    (c) the sealing of the Confidential Appendices.

A. The Approval and Vesting Order

13. In determining whether to approve a proposed sale of assets by a receiver, the Court must consider the following principles set out by the Ontario Court of Appeal in *Royal Bank v. Soundair* ("***Soundair***"):

    (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

    (b) whether the interests of all parties have been considered;

    (c) the efficacy and integrity of the process by which offers are obtained; and

[9] Prefiling Report at page 14, Motion Record at Tab 4.

(d) whether there has been unfairness in the working out of the process.[10]

14. In the present case, the Proposed Receiver submits that each element of the *Soundair* test has been met.

(a) *Efforts to Obtain the Best Price*: the Debtor and its assets were marketed in the SISP that took place in both Canada and the US over several months. NDP has deep experience in the printing industry, as it provides a broad range of investment banking and consulting services with a particular focus on the printing sector, and its partners have been involved in the sale or purchase of over 400 printing/packaging companies. In addition, the Proposed Receiver's Liquidation Analysis shows that the consideration to be paid by the Purchaser materially exceeds the liquidation value of the Debtor's business and assets. The Proposed Receiver was kept apprised of the status of the SISP being conducted by NDP. [11]

(b) *Interests of All the Parties*: the Proposed Receiver, BMO and the Debtor are all in support of the Purchase Agreement and the Transaction contemplated therein. In addition, the Transaction preserves employment for all or substantially all of the Debtor's employees, including its unionized employees. BMO supports the Transaction notwithstanding it is projected to incur a shortfall on its loans to the Debtor.[12]

(c) *The Efficacy and Integrity of the Process*: the SISP was conducted by an experienced arm's length investment bank. As noted above, the Proposed Receiver has reviewed the books and records of the Debtor, held discussions with

[10] *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (Ont. C.A.) at para 16.
[11] Prefiling Report at pages 10,11 and 14, Motion Record at Tab 4.
[12] Prefiling Report at pages 6 and 14, Motion Record at Tab 4.

BMO and certain representatives of the Debtor, participated in the negotiation and drafting of the Purchase Agreement, stayed apprised of the SISP while it was conducted and performed the Liquidation Analysis.[13]

(d) *Whether the Process was Unfair*: the Proposed Receiver does not believe that a further marketing process would result in a superior transaction. The Proposed Receiver believes that the Transaction is beneficial to the stakeholders given it will preserve employment and limit further erosion to BMO's security interests. Although the Proposed Receiver did not run the SISP, its familiarity with the conduct of the SISP and its prior involvement with the BMO and the Debtor, as financial advisor and CRA, affords the Proposed Receiver detailed knowledge of the Debtor and its business.[14] The Proposed Receiver believes that the Transaction maximizes recoveries for creditors and that the SISP was commercially reasonable with respect to timelines, the breadth of the marketing process and the information made available to the interested parties.[15]

15. This Court has, on numerous occasions, also applied *Soundair* principles to approve "quick flip" transactions, such as this one, in which a receiver, immediately upon its appointment, requests approval of an already negotiated purchase agreement. In addition, this Court has noted that "specific consideration to the economic realities of the business and the specific transactions in question" is warranted in the context of quick flip transactions.[16]

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[13] Prefiling Report at page 11, Motion Record at Tab 4.
[14] Prefiling Report at page 6, Motion Record at Tab 4.
[15] Prefiling Report at page 14, Motion Record at Tab 4.
[16] *Elleway Acquisitions Ltd. v. 4358376 Canada Inc.*, 2013 ONSC 7009 at para 33 [***Elleway***].

16. In *Tool-Plas Systems Inc., Re*., the Honourable Justice Morawetz, as he then was, observed that:

> A 'quick flip' transaction is not the usual transaction. In certain circumstances, however, it may be the best, or the only, alternative. In considering whether to approve a 'quick flip' transaction, the Court should consider the impact on various parties and assess whether their respective positions and the proposed treatment that they will receive in the 'quick flip' transaction would realistically be any different if an extended sales process were followed.[17]

17. In *Tool-Plas*, the quick flip transaction was approved where:

(a) there was substantial risk associated with a further marketing process;

(b) the proposed price exceeded the going concern and liquidation value of the assets;

(c) the transaction was a successful outcome for certain stakeholders, including the secured lenders and certain employees; and

(d) while certain parties would receive no recovery, this outcome was inevitable.[18]

18. The Proposed Receiver respectfully submits that the Transaction meets all the *Tool-Plas* criteria because:

(a) there is no money to conduct a further marketing process as BMO is not prepared to continue to fund such a process and the Transaction, being the "bird in hand", must, on the terms of the Purchase Agreement, close by December 30, 2022;

(b) the purchase price payable pursuant to the Purchase Agreement is the best that was offered in the SISP and the Liquidation Analysis shows that the purchase price materially exceeds liquidation value;[19]

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[17] *Tool-Plas Systems Inc., Re.* (2008), 48 C.B.R. (5th) 91 (Ont. S.C.J.), at para 15.
[18] *Ibid* at paras 10, 11, 16, 17 and 20.
[19] Prefiling Report at page 14, Motion Record at Tab 4.

(c) the Transaction is a successful outcome for all or substantially all of the employees, whose employment will be continued, and the Transaction is agreeable to the first-ranking secured creditor, BMO[20]; and

(d) with the LOI being the best offer received in the SISP and providing a higher realization than could be expected in a liquidation, and with only partial recovery expected for BMO, it is inevitable that subordinate creditors will receive no recovery.

19. In the past, this Court has approved a quick flip sale on the basis that:

(a) an immediate sale was the only realistic way to provide maximum recovery for a creditor who stood in a clear priority of economic interest to all others;

(b) delay of the transaction would erode the realization of the security of the creditor as the sole economic interest[21]; and

(c) the record revealed a professional and prolonged effort to elicit interest in the properties from third party purchasers.[22]

20. The Transaction should thus be approved because:

(a) the Transaction is the best option for recovery for the first-ranking secured creditor BMO and the Transaction on its terms must close by December 30, 2022;

(b) delay would risk loss of the Transaction and therefore the loss of almost 140 jobs, the professional costs of further marketing would erode BMO's recovery and the

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[20] Prefiling Report at page 14, Motion Record at Tab 4.
[21] *Elleway supra* note 16 at para 33, citing *Fund 321 Ltd. Partnership v. Samsys Technologies Inc.* (2006), 21 C.B.R. (5th) 1 (Ont. S.C.J.) and *Bank of Montreal v. Trent Rubber Corp.* (2005), 13 C.B.R. (5th) 31 (Ont. S.C.J.).
[22] *Montrose Mortgage Corp. v. Kingsway Arms Ottawa Inc.*, 2013 ONSC 6905 at para 11 [***Montrose***].

lack of funding for continued operations, which will not be funded by BMO, would reduce the going-concern value of the Debtor's business; and

(c) the SISP was a professional and prolonged effort to elicit interest from third party purchasers.

21. The Proposed Receiver therefore submits that circumstances of the Transaction lend themselves favourably to the specific considerations afforded to quick flip sales.

22. The Court has repeatedly held that it will place a great deal of confidence in a receiver's business judgment. Only in exceptional circumstances will the Court intervene and proceed contrary to the recommendation of a Court-appointed receiver.[23] In *Skyepharma PLC v. Hyal Pharmaceutical Corp.*, the Honourable Justice Farley stated:

> Provided a receiver has acted reasonably, prudently and not arbitrarily, a court should not sit as in an appeal from a receiver's decision, reviewed in detail every element of the procedure by which the receiver made the decision (so long as that procedure fits with the authorized process specified by the court if a specific order to that affect has been issued). To do so would be futile and duplicative. It would emasculate the role of the receiver and make it almost inevitable that the final negotiation of every sale would take place on the motion for approval. See *Royal Bank v. Soundair* at p. 14 and *Crown Trust Co. v. Rosenberg* at p. 109.[24]

23. The Court has accorded a receiver such deference even where the transaction under consideration is a "quick flip". In each of *Tool-Plas*, *Montrose Mortgage Corp. v. Kingsway Arms Ottawa Inc.* and *Fund 321 Ltd. Partnership v. Samsys Technologies Inc.*, ("***Fund 321***"), this Honourable Court showed deference to the sale transaction

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[23] *Morgan Trust Co. of Canada v. Falloncrest Financial Corp.*, [1996] O.J. No. 3919, aff'd [1996] O.J. No. 4298 (C.A.), leave to appeal dismissed, [1997] S.C.C.A. No. 438l at para 11.
[24] *Skyepharma PLC v. Hyal Pharmaceutical Corp.*, [1999] O.J. No. 4300, at para 7; aff'd (2000), 47 O.R. (3d) 234 (Ont. C.A.) at para 7.

recommendation made by a receiver or proposed receiver. The support of the Receiver, if appointed, for the Purchase Agreement in this case ought to be given similar deference.

24. In *9-Ball Interests Inc. v Traditional Life Sciences Inc.*, ("***9-Ball***"), Justice Brown, as he then was, dismissed an application to appoint a receiver and a motion to approve a quick flip sale, where the debtor, the applicant and the proposed purchaser were all related parties, and the purchaser was found to, effectively, be making a credit bid.[25] Brown J. distinguished *Tool-Plas* as a case of a related party purchaser, but not a credit bid, and distinguished *Fund 321* as neither a case of a related party transaction nor a credit bid. Brown J. found, in *9-Ball*, among other things, that he was not presented with sufficient evidence of the validity of the security being applied in the credit bid, and that the short, cursory sale process, provided insufficient evidence that the purchaser was offering the best price attainable.[26]

25. It is respectfully submitted that the present case ought to be distinguished on its facts from *9-Ball*. BMO, the Debtor and the Purchaser are all unrelated, and the Purchaser is not credit bidding. As well, in contrast to the sale process in *9-Ball*, the SISP was far from cursory as it was conducted over several months, to a large number of parties, by an investment bank with deep experience in the printing industry.

26. The Proposed Receiver recognizes that courts will scrutinize the adequacy and the fairness of the sales and marketing process in quick flip transactions.[27] With this in mind, the Proposed Receiver respectfully submits that the *Soundair* principles have been

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[25] *9-Ball Interests Inc. v Traditional Life Sciences Inc.*, 2012 ONSC 2788, at para 29.
[26] *Ibid* at paras 32 and 33.
[27] *Montrose*, *supra* note 22 at para 10.

satisfied and that the Purchase Agreement and the Transaction contemplated therein are commercially reasonable under the circumstances. This Court's approval of the Purchase Agreement and the associated vesting in favour of the Purchaser are in the best economic interests of the Debtor and its stakeholders. As such, the Proposed Receiver's request for the Approval and Vesting Order falls within "*the general principle that the court will be loathe to interfere with the business judgment of a Receiver and refuse to approve a transaction recommended by the Receiver acting properly in the fulfillment of its obligations as an officer of the court*."[28]

B. The Proposed Distribution to BMO

27. The Proposed Receiver submits that BMO holds valid and enforceable security interests in respect of the property covered by its security. The Proposed Receiver's counsel has reviewed the applicable loan and security documents and has provided the Proposed Receiver with a security opinion that confirms, subject to standard assumptions and qualifications, the validity of BMO's security interests in the Debtor's property, registered as against the Debtor.[29]

28. BMO is not expected to be repaid in full in respect of its loans to the Debtor.

C. The Success Bonus Plan

29. Based on its first-hand experience with the Debtor, the Proposed Receiver is seeking

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[28] *Morganite Canada Corp. v. Wolfhollow Properties Inc.* (2003), 47 CBR (4th) 89 (ONSC) at para 7.
[29] Prefiling Report at page 9, Motion Record at Tab 4.

authorization to make distributions to the Key Employees pursuant to the Success Bonus Plan. On or around November 3, 2022, the Debtor entered into the Success Bonus Plan with the Key Employees in order enhance the likelihood that these employees would not resign while the SISP was carried out. The Success Bonus Plan was developed by the Debtor, in consultation with BMO.[30]

30. The Proposed Receiver agrees that the Key Employees are integral to the operation of the business and that their involvement assisted in advancing the SISP. The Proposed Receiver has reviewed the terms of the Success Bonus Plan and is of the view that:

(a) the terms of the Success Bonus Plan are consistent with market for an employee retention plan;

(b) the amounts payable under the plan are reasonable; and

(c) the continued involvement and cooperation of the Key Employees, as further detailed in the Prefiling Report, will assist with the completion of the Transaction, thereby lowering professional costs.[31]

31. BMO consents to the Success Bonus Plan payments notwithstanding that it will suffer a shortfall on its loans to the Debtor.

D. Sealing of the Confidential Appendices

32. Confidential Appendices "1", "2" and "3" include confidential information regarding the SISP, the unredacted Purchase Agreement and the Liquidation Analysis, respectively. The Proposed Receiver recommends that these appendices be sealed for three months

[30] Prefiling Report at page 14, Motion Record at Tab 4.
[31] Prefiling Report at page 15, Motion Record at Tab 4.

following completion of the Transaction (if approved), as making these documents publicly available may negatively impact any future recoveries in these proceedings if the Transaction does not close. The three-month sealing period corresponds with the term of a post-closing transition services agreement required by the Purchase Agreement.

33. Confidential Appendix "4" includes personal information, including the terms of the Success Bonus Plan and the names of the Key Employees. As such, the Proposed Receiver is of the view that the information in this Confidential Appendix should be sealed subject to further order of the Court.

34. The test for determining whether a sealing request ought to be granted in a commercial context was set out by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*, namely:

(a) when such a request is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and

(b) when the salutary effects of the confidentiality request, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which, in this context, includes the public interest in open and accessible court proceedings.[32]

35. In *Sherman Estate v Donovan*, the Supreme Court of Canada held that a person asking a court to exercise discretion in limiting the 'open court' presumption must establish that:

(a) the openness poses a risk to an important interest of the public;

[32] *Sierra Club of Canada v. Canada (Minister of Finance)*, (2002), [2002] 2 S.C.R. 522 at para 53.

(b) the request sought is necessary to prevent the risk to the identified interest as reasonable alternative measures will not prevent said risk; and

(c) the benefits of the request outweigh the negative effects, as a matter of proportionality.[33]

36. In the insolvency context, when assets are being sold pursuant to a court process, it is common to seal bids and other commercially sensitive material, such as valuations and the sale price, in the event that a further sale process is required should the contemplated proposed transaction not close.[34]

37. The disclosure of commercially-sensitive information in this case would likely have a detrimental impact on any future sale efforts of the Proposed Receiver, in the event that the proposed Transaction does not close. The Proposed Receiver respectfully submits that there is no other reasonable way to preserve and ensure the viability and integrity of any future remarketing and sale process.

38. Additionally, the benefits of the protective order sought outweigh any deleterious impact on the "open court" principle and no stakeholder will be materially prejudiced by such an order. The request for a sealing order also embodies the principle of proportionality as the Proposed Receiver seeks to protect only the material terms of the Transaction and only for three months following the close of the Transaction.

39. With respect to Confidential Appendix "4", this Court recently approved the sealing of the amounts paid to certain individual employees pursuant to a key employee retention

[33] *Sherman Estate v. Donovan*, 2021 SCC 25 at para 38.
[34] *Romspen Investment Corporation v. Hargate Properties Inc.*, 2012 ABQB 412 at paras 2 and 13.

plan in *Just Energy Group Inc. et al*.[35] The Court noted the following reasons in approving the sealing order request:

> The limitation on the open courts principle is minimal. The order is proportional. It benefits in protecting privacy interests of non-party employees outweigh the very limited impact on the open courts principle.[36]

40. The Proposed Receiver respectfully submits that the same reasoning applies to the Key Employees' personal information. Publicly disclosing the personal information of the Key Employees would constitute an unnecessary violation of their privacy rights. Protecting such information thus outweighs any impact on the open courts principal.

PART IV – RELIEF SOUGHT

41. The Proposed Receiver respectfully requests the granting of the order substantially in the form contained in its motion record dated December 12, 2022.

ALL OF WHICH IS RESPECTFULLY SUBMITTED as of the date first written above.

Kyle Plunkett
Aird & Berlis LLP

Lawyers for the Receiver

[35] *Just Energy Group Inc. et al.*, 2021 ONSC 7630.
[36] *Ibid* at para 29.

SCHEDULE "A"
LIST OF AUTHORITIES

1.	*Royal Bank of Canada v. Soundair Corp.*, (1991) 4 O.R. (3d) 1 (C.A.)
2.	*Elleway Acquisitions Ltd. v. 4358376 Canada Inc.,* 2013 ONSC 7009
3.	*Tool-Plas Systems Inc., Re*. (2008), 48 C.B.R. (5th) 91 (Ont. S.C.J.)
4.	*Fund 321 Ltd. Partnership v. Samsys Technologies Inc*. (2006), 21 C.B.R. (5th) 1 (Ont. S.C.J.)
5.	*Bank of Montreal v. Trent Rubber Corp*. (2005), 13 C.B.R. (5th) 31 (Ont. S.C.J.)
6.	*Montrose Mortgage Corp. v. Kingsway Arms Ottawa Inc.*, 2013 ONSC 6905
7.	*Morgan Trust Co. of Canada v. Falloncrest Financial Corp.*, [1996] O.J. No. 3919, aff'd [1996] O.J. No. 4298 (C.A.)
8.	*Skyepharma PLC v. Hyal Pharmaceutical Corp.,* [1999] O.J. No. 4300, aff'd (2000), 47 O.R. (3d) 234 (Ont. C.A.).
9.	*9-Ball Interests Inc. v Traditional Life Sciences Inc.*, 2012 ONSC 2788
10.	*Morganite Canada Corp. v. Wolfhollow Properties Inc.*, (2003) 47 CBR (4th) 89 (ONSC)
11.	*Sierra Club of Canada v. Canada (Minister of Finance)* (2002), [2002] 2 S.C.R. 522
12.	*Sherman Estate v. Donovan*, 2021 SCC 25
13.	*Romspen Investment Corporation v. Hargate Properties Inc.*, 2012 ABQB 412
14.	*Just Energy Group Inc. et al.* 2021 ONSC 7630

SCHEDULE "B"
RELEVANT STATUTES

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended**

Court may appoint receiver
243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
(c) take any other action that the court considers advisable.

***Courts of Justice Act*, R.S.O. 1990, c. C-34, as amended**

Injunctions and receivers
101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Sealing documents
137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

BANK OF MONTREAL

Applicant

-and-

BRANT INSTORE CORPORATION

Respondent

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE RECEIVER

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