

Court File No.

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

**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**

BETWEEN:

**BANK OF MONTREAL**

Applicant

and

**BRANT INSTORE CORPORATION**

Respondent

**NOTICE OF MOTION  
(returnable December 20, 2022)**

KSV Restructuring Inc. (“**KSV**”), upon its appointment as the receiver and manager (the “**Receiver**”), without security, of the assets, undertakings and property of Brant Instore Corporation (the “**Debtor**”), and all proceeds thereof (collectively, the “**Property**”), will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on the 20<sup>th</sup> day of December, 2022 at 11:00 a.m., or as soon after that time as the motion can be heard, via a Zoom link to be provided by the Court.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- in writing under subrule 37.12.1 (1);
- in writing as an opposed motion under subrule 37.12.1 (4);
- in person;
- By telephone conference;
- By video conference.

**NATURE OF MOTION:**

1. The Motion is for an order (the “**Approval and Vesting Order**”), substantially in the form included in the attached hereto as **Schedule “A”**:

- (a) approving an agreement of purchase and sale (the “**Purchase Agreement**”) between the Receiver and 1000369798 Ontario Inc. (the “**Purchaser**”) for the purchase and sale of all of the Debtor’s right, title and interest in and to the 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) upon execution and delivery of a certificate by the Receiver containing confirmation of the closing of the Transaction, vesting in the Purchaser all rights, title and interest in the Purchased Assets (as defined in the Purchase Agreement);
- (c) sealing the Confidential Appendices (as defined in the Prefiling Report) for the specific period of times contained in the Approval and Vesting Order or until further order of the Court;

- (d) subject to maintaining sufficient reserves, authorizing and directing the Receiver to make:
  - (i) distributions to certain 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) distributions 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 its secured indebtedness; and
- (e) such further and other relief as counsel may request and this Honourable Court deems just.

**GROUNDS FOR THE MOTION:**

2. The grounds for the Motion are:

*BACKGROUND*

- (a) 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 and currently employs 139 employees, including 97 hourly workers who are members of the National Automotive, Aerospace, Transportation and General Workers Union of Canada;
- (b) 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;

- (c) BMO is the Debtor's primary secured creditor. BMO has provided various credit facilities, including a revolving credit facility and a capital expenditure facility;
- (d) the Debtor has been in default of its primary credit agreement with BMO since at least the first quarter of 2020;
- (e) the Debtor and BMO entered into a series of forbearance agreements and amendments and, after default thereunder, entered into a support agreement in September 2022 pursuant to which BMO agreed to continue to provide credit to the Debtor while it completed a Sale and Investment Solicitation Process (the "**SISP**") which the Debtor commenced the month prior;
- (f) in April 2022, KSV was retained first as BMO's financial advisor and then as the Debtor's chief restructuring advisor;
- (g) New Direction Partners, LLC ("**NDP**") was retained to carry out the SISP, which commenced on August 19, 2022;
- (h) NDP, an investment bank with a record of providing consulting services for owners and managers of printing companies, assembled a list of 47 prospective purchasers located in Canada and the United States. 14 parties signed nondisclosure agreements and performed due diligence, including the Purchaser;

- (i) the Purchaser submitted a binding letter of intent (the “**LOI**”) on October 6, 2022, which was determined to be the best letter of intent received in the SISP;
- (j) the LOI requires that the Transaction must close by December 30, 2022;
- (k) KSV, as proposed Receiver (in such capacity, 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 and the Proposed Receiver believes that the Transaction is in the best interest of the Debtor and its stakeholders, and that the Transaction should be completed on an urgent basis;
- (l) the Proposed Receiver thus recommends that this Court approve the Purchase Agreement for the reasons described in the Prefiling Report, being, in substance:
  - (i) the SISP conducted by NDP was commercially reasonable and maximizes recoveries and the Proposed Receiver does not believe that a further marketing process would result in a transaction more beneficial to the stakeholders than the one contemplated by the Purchase Agreement;
  - (ii) NDP has advised the Proposed Receiver that it believes the Transaction is the best available in the circumstances and that further time marketing the Debtor’s business for sale is unlikely to result in a superior transaction;
  - (iii) the Debtor is without adequate liquidity to conduct any further marketing or sale process;

- (iv) the Transaction will see the business of the Debtor continue, thereby preserving employment for all or substantially all employees, including its unionized employees;
- (v) the purchase price materially exceeds the liquidation value of the Debtor's business and assets;
- (vi) in the event of a shut down and forced liquidation, significant disposition costs would be incurred, further decreasing the realizable value of the Property;
- (vii) BMO, though facing a significant shortfall on its loans to the Debtor, supports the Transaction and will not finance a further sale process;
- (viii) the Proposed Receiver is of the view that the purchase price is fair and reasonable in the circumstances;
- (ix) the Purchased Assets (as defined in the Purchase Agreement) are being purchased on an "as is, where is" basis; and
- (x) the Transaction has a short and efficient closing period, which ameliorates the urgency stemming from the lack of liquidity;

*PROPOSED SUCCESS BONUS PLAN PAYMENTS AND DISTRIBUTION TO BMO*

- (m) the Receiver will seek, within the Approval and Vesting Order, authorization to make the payments contemplated by the Success Bonus Plan (collectively, the "**Success Bonus**") which the Debtor entered into with certain of its key employees

(the “**Success Bonus Plan Employees**”) in order to enhance the likelihood that these employees would not resign while the SISP was carried out;

- (n) the Proposed Receiver has reviewed the terms of the Success Bonus Plan and is of the view that it is consistent with market key employee retention plans and that the amounts payable under the plan are reasonable;
- (o) if the Transaction closes, the Success Bonus will be earned and payable and BMO has consented to the payment of the Success Bonus from the net proceeds of the Transaction in priority to any distribution to BMO;
- (p) the Debtor is indebted to and has provided security in favour of BMO in connection with its respective loans and financing arrangements, and the Proposed Receiver has obtained an independent legal opinion confirming the validity and enforceability of the security granted by the Debtor in favour of BMO;
- (q) Based on the Debtor’s books and records as of December 6, 2022, the approximate balance owing to BMO is \$13,022,365, with interest and costs continuing to accrue;
- (r) the Receiver will seek, within the Approval and Vesting Order, authorization to make a distribution from the sale proceeds generated from the Transaction to BMO after appropriate reserves are taken for the completion of the receivership and after the Success Bonus has been distributed, in partial satisfaction of the secured indebtedness owing to BMO;

*SEALING OF THE CONFIDENTIAL APPENDICES*

- (s) the Confidential Appendices to the Prefiling Report contain the Success Bonus Plan Employees' personal information, information about the SISP that was prepared by NDP, the unredacted Purchase Agreement, and the liquidation analysis prepared by the Proposed Receiver;
- (t) if the SISP information, unredacted Purchase Agreement and liquidation analysis are disclosed, sensitive transaction information would be made publicly available which may impair realizations in the proceedings;
- (u) if the Success Bonus Plan information is disclosed, it could negatively impact the privacy of the Success Bonus Plan Employees and any future recoveries in these proceedings;
- (v) accordingly, in the Proposed Receiver's view, it is necessary and appropriate for the Confidential Appendices to be sealed;
- (w) the Receiver will seek to have the Confidential Appendices containing the SISP information, the unredacted Purchase Agreement, and the liquidation analysis sealed for three months, which tracts the term of the post-closing transition services agreement required pursuant to the Purchase Agreement;
- (x) the Receiver will seek to have the Confidential Appendix containing the Success Bonus Plan information sealed until further Order of the Court;



*GENERALLY*

- (y) the circumstances that exist make the Order to be sought by the Receiver appropriate;
- (z) the other grounds set out in the Prefiling Report and the Affidavit of Joshua Seager, sworn December 9, 2023, filed in connection with BMO's application within (the "**Seager Affidavit**");
- (aa) the inherent and equitable jurisdiction of this Honourable Court;
- (bb) Section 243 of the *Bankruptcy and Insolvency Act* (Canada) and any other provision thereof;
- (cc) The *Rules of Civil Procedure* (Ontario), RRO 1990, reg. 194, including, without limitation, rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 41 thereof; and
- (dd) Such further and other grounds as counsel may advise and this Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Prefiling Report, including the appendices thereto;
- (b) the Seager Affidavit; and
- (c) such further and other material as counsel may submit and this Court may permit.

Date: December 9, 2022

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*Lawyers for the Receiver*

TO: **SERVICE LIST**

**BANK OF MONTREAL**  
Applicant

- and -

**BRANT INSTORE CORPORATION**  
Respondent

Court File No.

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

**Proceedings commenced at Toronto**

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**NOTICE OF MOTION**  
**(returnable December 20, 2022)**

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*Lawyers for the Receiver*

SCHEDULE "A"

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 20<sup>TH</sup> 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.

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Schedule “A” – Form of Receiver’s Certificate

Court File No. \_\_\_\_\_

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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 9, 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 contemplated 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.

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

**Proceedings commenced at Toronto**

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**APPROVAL AND VESTING ORDER**

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