



**Second Report of
KSV Restructuring Inc.
as Receiver and Manager of 3886727
Canada Inc., carrying on business as
Holistic Blend**

January 24, 2022

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COURT FILE NO: CV-19-00620981-00CL

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

**BRIDGING INCOME FUND LP,
by its general partner SB FUND GP INC.**

APPLICANT**- AND -**

**3886727 CANADA INC.,
carrying on business as HOLISTIC BLEND**

RESPONDENT

**SECOND REPORT OF
KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF
3886727 CANADA INC., CARRYING ON BUSINESS AS HOLISTIC BLEND**

JANUARY 24, 2022

1.0 Introduction

1. On May 30, 2019, Bridging Income Fund LP (“Bridging”) brought an application in the Ontario Superior Court of Justice (Commercial List) (the “Court”) to appoint KSV Restructuring Inc. (“KSV”) ¹ as receiver and manager (in such capacity, the “Receiver”) of the assets, property and undertaking (the “Assets”) of 3886727 Canada Inc., carrying on business as Holistic Blend (the “Company”). On June 12, 2019, the Court issued an order appointing KSV as Receiver (the “Receivership Order”). A copy of the Receivership Order is attached as Appendix “A.”
2. The principal purposes of these proceedings were to market and sell the Company’s assets.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company and these proceedings;
 - b) provide an overview of the Receiver’s activities since the Receiver’s First Report to Court dated December 18, 2019 (“First Report”). A copy of the First Report is attached as Appendix “B;”

¹ On August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

- c) summarize the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP (“A&B”);
- d) recommend that the Receiver be discharged of its duties and obligations under the Receivership Order subject to filing a certificate with the Court confirming that all outstanding receivership matters have been completed (the “Discharge Certificate”); and
- e) recommend the Court issue an order:
 - i. approving the activities of the Receiver, as described in this Report:
 - ii. approving the fees and disbursements of the Receiver and A&B, plus an accrual of \$20,000 (provided that there is no opposition to the Receiver’s within motion) for fees and disbursements to be incurred by the Receiver and A&B to the completion of these proceedings (the “Fee Accrual”);
 - iii. authorizing the Receiver to distribute any residual surplus funds, if any, to the Bridging Receiver (as defined below), in partial consideration of the amounts owing under the Receiver’s Borrowings Charge (as defined in the Receivership Order);
 - iv. discharging the Receiver upon filing the Discharge Certificate; and
 - v. releasing the Receiver, upon the Receiver’s discharge, from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting as Receiver, save and except for its gross negligence or wilful misconduct.

1.2 Currency and Receivership Materials

1. All currency references in this Report are to Canadian dollars.
2. All materials filed in the receivership proceedings are available on the Receiver’s website at <https://www.ksvadvisory.com/insolvency-cases/case/holistic-blend>.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information of the Company, the limited books and records of the Company made available to it by the Company’s management and discussions with representatives of the Company, Bridging and the Bridging Receiver. The Receiver has not performed an audit or other verification of such information.
2. The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.

3. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Company's financial information should perform its own diligence and any reliance placed by any party on the financial information presented herein shall not be considered sufficient for any purpose whatsoever.

2.0 Background

1. Prior to the receivership, the Company carried on business as a manufacturer and distributor of organic pet food and pet health care products from leased premises located at 3600A Laird Road, Units 9-11, in Mississauga, Ontario (the "Premises").
2. Due to cash flow and other issues, the Receiver understands that the Company discontinued operations prior to the commencement of these proceedings. The Receiver understands that the Company previously employed ten individuals, who were all terminated prior to the date of the Receivership Order. The Receiver also understands that the Company's workforce was not unionized and that the Company did not maintain any registered pension plans.

2.1 Assets

1. The Company's unaudited financial statements as at March 31, 2019 reflected assets with a book value of approximately \$1.3 million, as presented in the following table.

(C\$)	Book Value
Accounts receivable	450,521
Inventory	756,926
Other	92,301
	<u>1,299,748</u>

2. Despite the inventory having a book value of approximately \$800,000, there was very limited inventory on the premises at the commencement of the receivership proceedings. Details in this regard were summarized by the Receiver in the First Report, beginning at subsection 3.1.
3. In addition, Debbie Pelczynski, the Company's sole director, advised the Receiver that as of the date of the Receivership Order, the Company had no accounts receivable. Ms. Pelczynski advised that the accounts receivable balance as of March 31, 2019 represented prepaid sale orders that had not been shipped; the Receiver was unable to verify this based on the Company's books and records. The Receiver reported accordingly in its First Report, at subsection 3.2.

4. To the best of the Receiver's knowledge, the only other asset of the Company was its intellectual property (the "IP"), which was the subject of a litigated dispute between Bridging and 9022619 Canada Inc. ("902"). 902 is a related entity to the Company, which unsuccessfully claimed ownership of certain IP. The First Report was filed in the context of this litigated dispute and other related litigation advanced by 902. A summary of the various pieces of the litigation and their results appears later in this Report.

2.2 Secured Creditors

1. Bridging is the Company's principal secured creditor. Bridging provided factoring and demand loan facilities to the Company and is owed approximately \$2.4 million, excluding interest and costs that continue to accrue.
2. In addition to Bridging, Bank of Montreal ("BMO") and PPN Limited Partnership ("PPN") also have *Personal Property Security Act* (Ontario) registrations against the Company. Based on discussions with the Company's principal, Ms. Debbie Pelczynski, the Receiver understands that PPN is owed approximately \$22,000 and that BMO is owed approximately \$650,000, excluding interest and costs that continue to accrue.
3. As set out below and in the Receiver's statement of receipts and disbursements, it is not expected that any monies will become available to satisfy any of the Company's secured debt other than, possibly, a repayment of some of the amounts owing under the Court-ordered Receiver's Borrowings Charge.

2.3 Trust Claims

1. As set out at paragraph 2.3 of the First Report, Canada Revenue Agency ("CRA") conducted a trust examination, which resulted in CRA trust claims in respect of unremitted source deductions in the amount of approximately \$120,000. As set out below and in the Receiver's statement of receipts and disbursements, it is not expected that any monies will become available to satisfy any of this claim.

3.0 Marketing and Sale Efforts

1. The Receivership Order authorized the Receiver to market the assets of the Company.
2. On July 26, 2019, the Receiver commenced a sale process ("Sale Process") by distributing an interest solicitation letter detailing the opportunity to over 50 prospective purchasers ("Prospective Purchasers").
3. Three Prospective Purchasers executed non-disclosure agreements and were provided with further information regarding the Company via a virtual data room.
4. No offers were received on or prior to the bid deadline of August 19, 2019. Other than Bridging, all Prospective Purchasers that responded to the Sale Process solicitation letter advised the Receiver that they did not have any interest in pursuing the opportunity.

5. The only Prospective Purchaser that expressed any interest in completing a transaction was Bridging. Given 902's assertion that the IP was not property of the Company, Bridging advised the Receiver that it required clarity on the ownership of the IP. The Receiver advised Bridging that it would stall the Sale Process pending a resolution regarding the ownership of the IP to provide it time to consider submitting an offer.

4.0 Litigation

1. On October 7, 2019, Bridging served a motion record seeking the following substantive relief (the "Bridging Motion"):
 - a) a declaration from the Court that any IP is property of the Company, and therefore subject to Bridging's security and these receivership proceedings; or
 - b) in the alternative, a declaration from the Court that the transfer of the Trademarks (as defined in the Bridging Motion) from the Company to 902 is void as against Bridging and the Receiver as a fraudulent conveyance under the *Fraudulent Conveyances Act* (Ontario) and/or the *Assignments and Preferences Act* (Ontario).
2. On October 21, 2019, 902 served a responding and cross-motion record, pursuant to which 902 opposed the relief sought in the Bridging Motion and sought certain relief against Bridging and the Receiver (collectively, "902's Response and Cross-Motion").
3. The Receiver did not take a position with respect to the Bridging Motion or 902's Response and Cross-Motion, except that the Receiver opposed the following relief that was sought by 902 against the Receiver:
 - a) payment from the Receiver of occupation rent (the "Occupation Rent");
 - b) disgorgement from the Receiver of \$27,795.19 paid by wire on August 16, 2019 by a customer into the Company's account (the "Customer Payment"); and
 - c) costs from the Receiver.
4. The Receiver was entirely successful in opposing the above three branches of relief sought against it by 902. A copy of the Order of The Honourable Madam Justice Gilmore in this regard dated January 9, 2020 (the "January 9th Order") is attached as Appendix "C." Amongst other things, the January 9th Order also approved the First Report and the actions of the Receiver described therein, approved the fees and disbursements of the Receiver and its counsel claimed in the First Report and ordered 902 to pay \$6,200 in costs to the Receiver for oral reasons given (the "Cost Award"). Following formal demand made by the Receiver's counsel on February 13, 2020, the Cost Award was subsequently paid by 902 in March 2020.

5. In the Reasons for Decision issued by the Court on January 28, 2020 (the “Reasons”), Her Honour also granted the Bridging Motion, confirming at paragraph 43 of the Reasons that *“any and all intellectual property used by the [Company] (3886727 Canada Inc.) is the property of the [Company] and is subject to [Bridging]’s security interest and the Receivership proceeding.”* A copy of the Reasons is attached as Appendix “D.”
6. Following the release of the Reasons, the Receiver asked Bridging if it intended to make a bid for the IP. Bridging advised that it wanted to consider the impacts of the COVID pandemic prior to considering submitting an offer. As there was no other party interested in the assets, including the IP, the Receiver did not see the need to remarket the assets.

5.0 Applicant’s Receivership Proceedings

1. On April 30, 2021, the Ontario Securities Commission (the “OSC”) filed an application before the Court in respect of Bridging. The Court made an order on April 30, 2021 (the “Bridging Receivership Order”) and appointed PricewaterhouseCoopers Inc., LIT (“PwC”) as receiver and manager without security, of all the assets, undertakings and properties of Bridging (the “Bridging Receiver”).
2. Since the appointment of the Bridging Receiver, the Receiver has engaged with the Bridging Receiver to assess its interest in completing a credit-bid transaction for the Assets. The Bridging Receiver confirmed that it had no such intentions.

6.0 Receipts and Disbursements

1. Attached as Appendix “E” is a statement of receipts and disbursements for the period June 12, 2019 to January 21, 2022. There is currently a balance of \$27,376 in the Receiver’s trust account.
2. The Sale Process yielded very limited interest in the IP and did not result in any bids. The Bridging Receiver has declined to fund further sale efforts and has indicated to the Receiver that it does not see an economic benefit in doing so.
3. In order to fund these proceedings, the Receiver borrowed approximately \$165,000 from Bridging under the Receiver’s Borrowings Charge granted under the Receivership Order. No repayments were made in respect of these borrowings. Subject to Court approval and the payment of the Receiver’s fees and disbursements and those of its counsel (addressed below, including the Fee Accrual), the Receiver intends to distribute any residual surplus funds, if any, to the Bridging Receiver, in partial consideration of the amounts owing under the Receiver’s Borrowings Charge.

7.0 Overview of the Receiver's Activities

1. Since December 18, 2019, the date of the First Report, The Receiver's activities have included, *inter alia*, the following:
 - communicating extensively with A&B, Bridging, the Bridging Receiver and counsel for Bridging and the Bridging Receiver;
 - attending at Court on January 9, 2020 for the above-referenced hearing and reviewing the resulting orders and reasons;
 - corresponding with CRA;
 - reviewing a Notice of Appeal filed by 902 and resulting correspondence in relation to the January 9th Order, which underlying appeal the Receiver understands was ultimately not pursued;
 - preparing the Company's 2019 T4's and corresponding with the Company's former employees regarding same;
 - filing a T4 Summary with CRA ;
 - corresponding with Ms. Pelczynski regarding the Company's records;
 - drafting this Report; and
 - dealing with all other matters pertaining to the administration of this mandate.

8.0 Professional Fees

1. The fees and disbursements (exclusive of HST) of the Receiver for the period from November 1, 2019 to January 21, 2022 and of A&B for the period from December 3, 2019 to January 5, 2022 are summarized in the table below.

(\$)				
Firm	Fees	Disbursements	Total	Average Hourly Rate
KSV	34,154.00	24.11	34,178.11	512.90
A&B	23,769.50	761.25	24,530.75	439.36
Total	57,923.50	785.36	58,708.86	

2. Detailed invoices for the Receiver and A&B can be found in the affidavits sworn by their representatives in Appendices "F" and "G," respectively.
3. The Receiver believes that the Fee Accrual is sufficient and necessary to cover its fees and disbursements and those of A&B to the completion of these proceedings.

4. The Receiver is of the view that the hourly rates charged by A&B are consistent with the rates charged by corporate law firms practising in the area of insolvency in the Toronto market and accurately reflect the work that was done in connection with this matter and that all of the time spent by the Receiver was reasonable and necessary in the circumstances.

9.0 Receiver's Discharge

1. Prior to completing its administration, the Receiver intends to:
 - prepare and file the Receiver's final report required under Section 246 of the BIA; and
 - deal with any sundry issues not specified above.
2. Once the Receiver has completed its activities, it intends to file the Discharge Certificate as its duties and responsibilities under the Receivership Order and other orders made in these proceedings will have been completed.

10.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make the order granting the relief detailed in section 1.1(1)(e) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
3886727 CANADA INC., CARRYING ON BUSINESS AS HOLISTIC BLEND
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Appendix “A”

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

THE HONOURABLE

Madam

)

WEDNESDAY, THE 12th

JUSTICE

Chiappetta

)

DAY OF JUNE, 2019

)



**BRIDGING INCOME FUND LP,
by its general partner SB FUND GP INC.**

Applicant

- and -

**3886727 CANADA INC.,
carrying on business as Holistic Blend**

Respondent

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**"), appointing KSV Kofman Inc. as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 3886727 Canada Inc., carrying on business as Holistic Blend (the "**Debtor**"), acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Brian Champ sworn May 30, 2019 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, the Respondent, and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Lynda Christodoulou sworn May 31, 2019, and on reading the consent of KSV Kofman Inc. to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Kofman Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed 500,000; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the

foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or

affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in

respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or

such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario*

Water Resources Act, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and

encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or

otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol.

30. **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.

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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

JUN 12 2019

PER / PAR: UM

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Kofman Inc. the receiver (in such capacity, the "Receiver") of the assets, undertakings and properties of 3886727 Canada Inc., carrying on business as Holistic Blend (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 12th day of June, 2019 (the "Order") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KSV KOFMAN INC., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

BRIDGING INCOME FUND LP,
by its general partner SB FUND GP INC.

Applicant

-and-

3886727 CANADA INC.,
carrying on business as Holistic Blend

Respondent

Court File No. CV-19-00620981-00CL

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Applicant

Appendix “B”



**First Report of
KSV Kofman Inc.
as Receiver and Manager of 3886727
Canada Inc., carrying on business as
Holistic Blend**

December 18, 2019

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COURT FILE NO: CV-19-00620981-00CL

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

**BRIDGING INCOME FUND LP,
by its general partner SB FUND GP INC.**

APPLICANT

- AND -

**3886727 CANADA INC.,
carrying on business as HOLISTIC BLEND**

RESPONDENT

**REPORT OF
KSV KOFMAN INC.,
IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF
3886727 CANADA INC., CARRYING ON BUSINESS AS HOLISTIC BLEND**

DECEMBER 18, 2019

1.0 Introduction

1. On May 30, 2019, Bridging Income Fund LP (the "Applicant") brought an application in the Ontario Superior Court of Justice (Commercial List) (the "Court") to appoint KSV Kofman Inc. ("KSV") as receiver and manager (in such capacity, the "Receiver") of the assets, property and undertaking of 3886727 Canada Inc., c.o.b. as Holistic Blend (the "Company"). On June 12, 2019, the Court issued an order appointing KSV as Receiver (the "Receivership Order"). A copy of the Receivership Order is attached as Appendix "A".
2. The principal purposes of these proceedings are to market and sell the Company's assets and to distribute the proceeds to creditors.
3. This report ("Report") is filed by the Receiver to assist the Court in considering the relief being sought by each of the Applicants, 9022619 Canada Inc. ("902"), an entity related to the Company, and the Receiver at the motion and cross-motions returnable January 9, 2020

1.1 Litigation

1. On October 7, 2019, the Applicant served a motion record seeking the following substantive relief (the “Applicant’s Motion”):
 - a) a declaration from the Court that any intellectual property used by the Company (the “IP”) is property of the Company (“Property”), and therefore subject to the Applicant’s security and these receivership proceedings; or
 - b) in the alternative, a declaration from the Court that the transfer of the Trademarks (as defined in the Applicant’s Motion) from the Company to 902 is void as against the Applicant and the Receiver as a fraudulent conveyance under the *Fraudulent Conveyances Act* (Ontario) and/or the *Assignments and Preferences Act* (Ontario).
2. On October 21, 2019, 902 served a responding and cross-motion record, pursuant to which 902 is opposing the relief sought in the Applicant’s Motion and is seeking certain relief against the Applicant and the Receiver (collectively, “902’s Response and Cross-Motion”).
3. The Receiver is not taking a position with respect to the Applicant’s Motion or 902’s Response and Cross-Motion, except that 902 is seeking:
 - a) payment from the Receiver of occupation rent;
 - b) disgorgement from the Receiver of \$27,795.19 paid by wire on August 16, 2019 by a customer into the Company’s account (the “Customer Payment”); and
 - c) costs from the Receiver.

1.2 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company and these proceedings;
 - b) address 902’s Response and Cross-Motion as it relates to occupation rent, the Customer Payment and costs;
 - c) provide an overview of the Receiver’s activities since the date of the Receivership Order;
 - d) summarize the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP (“A&B”), from the commencement of these proceedings to October 31, 2019; and

- e) recommend the Court issue orders:
- i. dismissing the components of 902's Response and Cross-Motion that seek:
 - payment from the Receiver of occupation rent;
 - disgorgement from the Receiver's bank account of the Customer Payment; and
 - costs from the Receiver;
 - ii. approving the fees and disbursements of the Receiver and A&B from the commencement of these proceedings to October 31, 2019; and
 - iii. approving this Report and the Receiver's activities detailed herein.

1.3 Currency and Receivership Materials

1. All currency references in this Report are to Canadian dollars.
2. All materials filed in the receivership proceedings are available on the Receiver's website at <https://www.ksvadvisory.com/insolvency-cases/case/holistic-blend>.

1.4 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information of the Company, the limited books and records of the Company made available to it by the Company's management and discussions with representatives of the Company and the Applicant. The Receiver has not performed an audit or other verification of such information.
2. The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
3. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Company's financial information should perform its own diligence and any reliance placed by any party on the financial information presented herein shall not be considered sufficient for any purpose whatsoever.

2.0 Background

1. Prior to the receivership, the Company carried on business as a manufacturer and distributor of organic pet food and pet health care products from leased premises located at 3600A Laird Road, Units 9-11, in Mississauga, Ontario (the “Premises”).
2. Due to cash flow and other issues, the Receiver understands that the Company discontinued operations prior to the commencement of these proceedings. The Receiver understands that the Company previously employed ten individuals, who were all terminated prior to the date of the Receivership Order. The Receiver also understands that the Company’s workforce was not unionized and it did not maintain any registered pension plans.
3. A further description of the events leading up to the receivership can be found in the Applicant’s application record dated May 30, 2019 (the “Application Record”), a copy of which has been posted by the Receiver on its case website.

2.1 Assets

1. The Company’s unaudited financial statements as at March 31, 2019 reflect assets with a book value of approximately \$1.3 million, as presented in the following table.

(C\$)	Book Value
Accounts receivable	450,521
Inventory	756,926
Other	92,301
	<u>1,299,748</u>

2. The realizable value of the assets will be determined by the outcome of the Receiver’s ongoing sale process, as discussed in Section Six of this Report.

2.2 Secured Creditors

1. The Applicant is the Company’s principal secured creditor. The Applicant provided factoring and demand loan facilities to the Company and is owed approximately \$2.4 million, excluding interest and costs that continue to accrue.
2. In addition to the Applicant, Bank of Montreal (“BMO”) and PPN Limited Partnership (“PPN”) also have *Personal Property Security Act* (Ontario) registrations against the Company. Based on discussions with the Company’s principal, Ms. Debbie Pelczynski, the Receiver understands that PPN is owed approximately \$22,000 and that BMO is owed approximately \$650,000.

2.3 Trust Claims

1. Canada Revenue Agency (“CRA”) has conducted a trust examination, which resulted in CRA trust claims in respect of unremitted source deductions in the amount of approximately \$120,000.

3.0 9022619 Canada Inc.

1. The Receiver understands that 902's business is similar to the business carried on by the Company. The Receiver further understands that:
 - a) 902 manufactures and distributes pet food to certain of the Company's former customers;
 - b) 902 operates from the Premises; and
 - c) Ms. Pelczynski is the principal of 902.
2. The Receiver is unaware of when 902 commenced operations, including whether it conducted business while the Company operated.
3. The Receiver has several concerns about its dealings with 902, which are summarized below.

3.1 Inventory

1. On June 7, 2019, during the interim period between service of the Application Record and the date of the Receivership Order, a representative of KSV attended at the Premises as a consultant to the Applicant and was advised by Ms. Pelczynski that the Company was planning to ship its remaining inventory (pet food and related products) from the Premises prior to the commencement of the receivership. Ms. Pelczynski estimated the value of the inventory to be approximately \$80,000 at the time.
2. Following its appointment, the Receiver attended at the Premises and discovered that substantially all of the inventory had been removed. Ms. Pelczynski advised the Receiver that the inventory had been shipped to customers. Ms. Pelczynski further advised that she had been mistaken and that substantially all the inventory previously identified as inventory of the Company located at the Premises on June 7, 2019 belonged to 902 and had been prepaid by a customer.
3. The Receiver also asked Ms. Pelczynski about the location of the balance of inventory that existed as at March 31, 2019. Ms. Pelczynski advised the Receiver that the Company had recently disposed of Company inventory with a book value of approximately \$300,000 because it had purportedly expired and that the balance of the inventory had been sold. The Receiver asked for support for the disposal and sale of the inventory but has not been provided with any further information.

3.2 Accounts Receivable

1. According to Ms. Pelczynski, as of the date of the Receivership Order, the Company had no accounts receivable. Ms. Pelczynski advised the accounts receivable balance as of March 31, 2019 represented prepaid sale orders that had not been shipped; the Receiver has been unable to verify this based on the Company's books and records.

3.3 Premises

1. At the commencement of the receivership, Ms. Pelczynski advised the Receiver that 902 was the tenant at the Premises. Ms. Pelczynski provided the Receiver with a lease for the Premises dated December 21, 2017 between 902 and The Great West Life Assurance Company and London Life Insurance Company, as landlord (the "Lease"). A copy of the Lease is attached as Appendix "B" to this Report.
2. Following its appointment, the Receiver and a representative of the Applicant toured the Premises. The representative of the Applicant noted that a door to another portion of the Premises had been covered with scaffolding and was inaccessible (the "902 Purported Space"). The Receiver requested access to the 902 Purported Space so that it could determine if it contained any of the Company's assets. Ms. Pelczynski advised the Receiver that the 902 Purported Space belonged solely to 902 and refused to grant access to that portion of the Premises. On June 17, 2019, four days after the first request, Ms. Pelczynski allowed the Receiver to view the 902 Purported Space. The Receiver did not identify any of the Company's assets in the 902 Purported Space.

3.4 Intellectual Property

1. At the commencement of the receivership, Ms. Pelczynski advised the Receiver that 902 was the owner of the IP and that the IP was licensed to the Company by 902. The Receiver requested evidence that 902 was the owner of the IP.
2. On June 14, 2019, the Receiver received copies of:
 - a) assignment agreements dated September 30, 2014 and May 1, 2015, pursuant to which the Company purports to have assigned certain trademarks to 902 (the "Assignment Agreements"); and
 - b) a license agreement dated May 2, 2015 between the Company and 902 (the "License Agreement"), pursuant to which the "Vendor" grants to the "Licensee" a licence to use certain intellectual property. The Licence Agreement does not define which of 902 or the Company is the "Vendor" and which is the "Licensee".
3. Copies of the Assignment Agreements and License Agreement are attached as Appendix "C" to this Report.
4. Furthermore, the Receiver also notes that at paragraphs 44 to 46 of the Affidavit of Ms. Pelczynski sworn October 18, 2019, which was included in 902's responding record, Ms. Pelczynski makes a definitive statement that the Receiver was aware that the Company did not own the IP. The Receiver wishes to clarify that its understanding of the ownership of the IP is based solely on the documentation provided to it by Ms. Pelczynski. Accordingly, the Receiver takes no position with respect to the validity and/or enforceability of the Assignment Agreements and/or the License Agreement.

4.0 Occupation Rent

1. As noted above, following the Receiver's appointment, Ms. Pelczynski provided the Receiver with a copy of the Lease.
2. The terms of the Receivership Order, among other things, empowers and authorizes the Receiver to take possession of and exercise control over the assets of the Company, which powers are at the discretion of the Receiver. At no time did the Receiver take possession of the assets located at the Premises nor did the Receiver occupy the space.
3. On September 27, 2019, 902's legal counsel wrote to the Receiver's counsel (the "September 27 Letter") to request payment of occupation rent because "*the Receiver has made no efforts to remove the property of [the Company] from the Premises.*". The September 27 Letter also attached a commercial sublease agreement between 902 and the Company (the "Sublease"). A copy of the September 27 Letter, including the Sublease, is attached as Appendix "D" to this Report. Prior to the September 27 Letter, the Receiver was unaware of the existence of the Sublease. The terms of the Sublease reflect that it had expired in May 2019, prior to the commencement of these receivership proceedings.
4. On September 30, 2019, by way of a responding letter (the "September 30 Letter"), the Receiver's counsel, A&B, reminded 902's counsel that the Receivership Order empowers, but does not obligate, the Receiver to take possession of any property or occupy any premises. The September 30 Letter also noted that at no time did the Receiver take possession of the Premises and that the Receiver is therefore not responsible for occupation rent. The Receiver understands from discussions with A&B that the foregoing is consistent with well-established case law. A copy of the September 30 Letter is attached as Appendix "E" to this Report.
5. Based on the foregoing, it is the Receiver's view that there is no basis to support 902's request for payment of occupation rent, and that such request should therefore be dismissed.

5.0 Customer Payment

1. On August 16, 2019, the Receiver received the Customer Payment, which was deposited into the Receiver's account maintained in connection with these proceedings, as required by the Receivership Order.
2. In addition to seeking occupation rent, the September 27 Letter also requested that the Receiver pay the Customer Payment to 902. The September 27 Letter advises that the Customer Payment was inadvertently paid to the Company by a Taiwanese customer of 902, O'Kat Co. Ltd. ("O'Kat"). In support of its payment request, the September 27 Letter attached an invoice on 902 letterhead with a shipping date of August 30, 2019 (the "Invoice") and what appears to be a wire transfer form in a foreign language reflecting payment to the Company.
3. A&B sent the September 30 Letter asking 902 to provide proper support for its entitlement to the Customer Payment, including a copy of the underlying agreement between 902 and O'Kat.

4. On October 9, 2019, 902's counsel:
 - a) replied that there was no underlying agreement as between 902 and O'Kat beyond the Invoice and purchase order;
 - b) provided what appears to be a 902-generated purchase order, numbered "JULY2019" and dated August 9, 2019 (the "Purchase Order");
 - c) provided an "express" bill of lading dated October 5, 2019, being more than a month after the shipping date reflected on the Invoice and in respect of a gross weight of almost double of what was reflected on the Purchase Order; and
 - d) provided a three-sentence letter from O'Kat, advising, in substance, that it did business with both the Company and 902, but that the Customer Payment was purportedly made to the Company in error instead of 902 (and in respect of an order made on August 12, 2019).
5. A copy of 902's counsel's response (including attachments) is attached as Appendix "F" to this Report.
6. Given 902's inconsistent narrative in respect of the Customer Payment, O'Kat's statement that it did business with both the Company and 902 and that a review of the Company's books and records may confirm to which recipient the Customer Payment rightly belongs, A&B wrote to both 902's counsel and O'Kat by separate letters dated October 16, 2019 (the "October 16 Letters"), requesting that Ms. Pelczynski and O'Kat provide the Receiver with the books and records evidencing the business relationship between O'Kat and the Company, including, without limitation, copies of any agreements, invoices and transaction reports that may exist between O'Kat and the Company. Copies of the October 16 Letters are attached collectively as Appendix "G" to this Report.
7. The Receivership Order provides, among other things, that all Persons (as defined therein) shall forthwith advise the Receiver of the existence of, and, upon request, provide copies of, any books and records related to the business or affairs of the Company (the "Records"); however, neither the Receiver nor its legal counsel has received any response to the October 16 Letters.
8. Moreover, neither the existence of the October 16 Letters nor the request for the specified Records was included or otherwise addressed in 902's Response and Cross-Motion that was served on October 21, 2019.
9. While the Receivership Order is clear that "*all funds, monies, cheques, instruments and other forms of payments received or collected by the Receiver ... from any source whatsoever ... shall be deposited in one or more new accounts to be opened by the Receiver ... [and] held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court,*" Ms. Pelczynski seeks to compel the Receiver to disburse the Customer Payment to 902 while withholding the Records that would assist in determining whether 902 has any entitlement to the Customer Payment. These Records include those specified in the October 16 Letters which should confirm whether O'Kat had any balance owing to the Company as at that date.

10. Based on the foregoing, the Receiver is of the view that it is appropriate for the Court to dismiss 902's request for payment of the Customer Payment.

6.0 Marketing and Sale Efforts

1. The Receivership Order authorizes the Receiver to market the assets of the Company. The Receiver has consulted with the Applicant and BMO, the Company's two primary economic stakeholders, regarding its marketing and sale efforts.
2. On July 26, 2019, the Receiver commenced a sale process, although its efforts have stalled pending resolution of the litigation.

7.0 Overview of the Receiver's Activities

1. The Receiver's activities to-date have included, *inter alia*, the following:
 - communicating extensively with A&B, the Applicant and Chaitons LLP (the Applicant's counsel);
 - reviewing and commenting on the receivership application materials, including the Affidavit of Brian Champ and the Receivership Order;
 - attending at Court on July 12, 2019 (for the hearing of the receivership application) and September 24, 2019 (for the scheduling of the Applicant's Motion);
 - corresponding with BMO regarding these receivership proceedings;
 - attending at the Premises to inspect the Company's assets and meet with Ms. Pelczynski;
 - corresponding with the Applicant and A&B regarding the Receiver's site visits to the Premises and the scope of the Company's remaining assets;
 - corresponding with CRA regarding the status of these proceedings and to arrange the trust exam;
 - corresponding with Ms. Pelczynski regarding the Company's records;
 - corresponding with the Company's stakeholders, including counsel to Wept International Holdings Limited (formerly known as Suga Investment Limited), Happypaws International Limited and United Fountain Investment Limited;
 - reviewing the End Use License Agreement and Trademark Assignment Agreement;
 - preparing a teaser and compiling information regarding the Company in respect of a marketing and sale process;
 - conducting the sale process;

- corresponding extensively with BMO and the Applicant regarding the marketing and sale efforts described earlier in this Report;
- preparing the *Notice and Statement of the Receiver* pursuant to Sections 245(1) and 246(1) of the BIA;
- reviewing correspondence between 902's counsel and A&B, and corresponding with A&B regarding same;
- Administering the Wage Earner Protection Program ("WEPP") with Service Canada to address amounts owing to the Company's former employees;
- Corresponding with the Company's former employees regarding WEPP;
- drafting this Report and reviewing all motion materials in connection with the Applicant's Motion, 902's Response and Cross-Motion and the Receiver's response and cross-motion; and
- dealing with all other matters pertaining to the administration of this mandate.

8.0 Professional Fees

1. The fees of the Receiver and A&B for the period from the commencement of the proceedings to October 31, 2019 are summarized in the table below.

(\$)				
Firm	Fees	Disbursements	Total	Average Hourly Rate
KSV	43,033.75	437.77	43,471.52	443.65
A&B	28,467.50	349.89	28,817.39	451.83
Total	71,501.25	787.66	72,288.91	

2. Detailed invoices for the Receiver and A&B can be found in the affidavits sworn by their representatives in Appendices "H" and "I", respectively.
3. The Receiver is of the view that the hourly rates charged by A&B are consistent with the rates charged by corporate law firms practising in the area of insolvency in the Toronto market and accurately reflect the work that was done in connection with this matter and that all of the time spent by the Receiver was reasonable and necessary in the circumstances.

9.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make the orders granting the relief detailed in section 1.2(1)(e) of this Report.

* * *

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc." with a stylized flourish at the end.

KSV KOFMAN INC.

**SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
3886727 CANADA INC., CARRYING ON BUSINESS AS HOLISTIC BLEND
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Appendix “C”

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

THE HONOURABLE **MADAM**) THURSDAY, THE 9TH
)
JUSTICE **GILMORE**) DAY OF JANUARY, 2020

BETWEEN:



**BRIDGING INCOME FUND LP,
by its general partner SB FUND GP INC.**

Applicant

- and -

**3886727 CANADA INC.,
carrying on business as Holistic Blend**

Respondent

**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**

ORDER

THIS CROSS-MOTION, KSV Kofman Inc. (“KSV”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of 3886727 Canada Inc., carrying on business as Holistic Blend (the “**Debtor**”), acquired for, or used in relation to a business carried on by the Debtor (the “**Property**”), for an order, amongst other things: (i) approving the First Report of the Receiver

dated December 18, 2019 (the “**First Report**”) and the actions of the Receiver set out therein; (ii) approving the fees and disbursements of the Receiver and its counsel; and (iii) declaring that no money is owed by the Receiver to 9022619 Canada Inc. (“**902**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Brian Champ sworn October 7, 2019 (including the exhibits thereto), the Affidavit of Debbie Pelczynski sworn October 18, 2019 (including the exhibits thereto) and the First Report (including the appendices thereto, including, without limitation, the fee affidavits therein (the “**Fee Affidavits**”)), and on hearing the submissions of counsel for the Receiver, counsel for 902, counsel for Bridging Income Fund LP, by its general partner SB Fund GP Inc. and such other counsel as was present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Paula Hoosain sworn December 19, 2019, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver’s notice of cross-motion and the Receiver’s corresponding responding and cross-motion record is hereby abridged and validated so that this cross-motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF FIRST REPORT

2. **THIS COURT ORDERS** that the First Report be and is hereby approved and the actions of the Receiver described therein be and are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel as set out in the Fee Affidavits be and are hereby approved.

NO REQUIREMENT TO PAY

4. **THIS COURT ORDERS AND DECLARES** that no money is owed by the Receiver to 902, whether on account of occupation rent, the misdirected Customer Payment (as defined in the First Report), costs or otherwise.

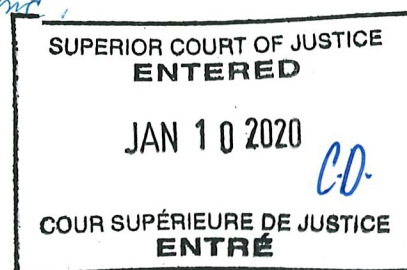
5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

C. A. Gilmore J.

Justice C.A. Gilmore

*Costs of \$6200^{all in} payable to the Receiver by the
 Receiver moving party 9022619 Canadian dollars
 of oral reasons given.*

C. A. Gilmore J.



**BRIDGING INCOME FUND LP,
by its general partner SB FUND GP INC.**

Applicant

-and-

**3886727 CANADA INC.,
carrying on business as Holistic Blend**

Respondent

Court File No. CV-19-00620981-00CL

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

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett (LSO # 61044N)
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Lawyers for the Receiver

Appendix “D”

CITATION: Bridging Income Fund LP v. 3886727 Canada Inc., 2020 ONSC 602
COURT FILE NO.: CV-19-00620981-00CL
DATE: 20200128

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
Bridging Income Fund LP by its general)	S. Rappos, for the Applicant
partner SB Fund GP Inc.)	
)	
Applicant)	
)	
– and –)	
)	
3886727 Canada Inc. carrying on business)	Jacqueline Horvat and Sarah Petersen, for
as Holistic Blend)	the Respondents and for the Moving Party
)	9022619 Canada Inc.
Respondent)	
)	
)	Jeremy Nemers for the court appointed
)	Receiver KSV Kofman Inc.
)	
)	HEARD: January 9, 2020

C. GILMORE, J.

REASONS FOR DECISION

OVERVIEW

[1] There are two motions before the court. The Applicant’s motion for a declaration that all intellectual property used by the Debtor Respondent, 3886727 Canada Inc. (“the Debtor” or “388”), in operating its business is the property of the Debtor and subject to the Applicant’s security and the receivership proceeding.

[2] In the alternative, a declaration that the transfer of certain Trademarks (as defined below) by the Debtor to 9022619 Canada Inc. (“902”) is void as against the Applicant and the Receiver as a fraudulent conveyance under the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 (“the *FCA*”).

[3] 902 brings a cross-motion requiring the Receiver to disgorge the sum of CAD \$27,795.19, which it alleges was inadvertently paid to the account of the Debtor by a customer of 902.

[4] Certain issues were resolved on consent of all parties. 902 agreed, on the day prior to the motion, to withdraw its claim for occupation rent from the Receiver. As well, the parties agreed to approve the fees and disbursements of the Receiver and its counsel, and the First Report of the Receiver dated December 18, 2019.

[5] The Receiver brought its own motion to dismiss 902's motions and for approval of its fees and Report. The Receiver took no position on the Applicant's motion.

[6] At the conclusion of argument, I dismissed 902's motion and reserved on the Applicant's motion with reasons to follow on both. These are the reasons.

[7] On the date of the hearing, I also signed the Receiver's draft order with respect to approval of the fees and Report and dismissal of 902's motion as well as an award of costs in the amount of \$6,200 payable by 902 to the Receiver. The costs order against 902 was made after giving oral reasons based on the parties' submissions on the day of the motion.

BACKGROUND

[8] The Debtor carried on business for 20 years as "Holistic Blend," a wholesale distributor of pet food and health care products. The Debtor sold and distributed products under the names "Holistic Blend" or "Holistic Blend My Healthy Pet."

[9] 902 was incorporated in 2014. 902 also sells pet food products to buyers, wholesalers, and consumers. There is no dispute that Ms. Debbie Pelczynski is the directing mind of 388 and 902. 902 also has the same head office as 388. Ms. Pelczynski's evidence was that she incorporated 902 for estate and tax planning reasons and on the advice of her accountant and lawyer.

[10] The Debtor was incorporated on April 18, 2001, and Debbie Pelczynski was the sole officer and director of the Debtor at all material times. The Applicant provided financing to the Debtor by way of Term Sheet dated May 24, 2015, a master factoring agreement, and a demand grid promissory note dated June 19, 2015. The Debtor also granted to the Applicant a General Security Agreement ("the GSA") dated June 19, 2015 over all of its present and after-acquired property as security for payment of its indebtedness and obligations to the Applicant. As a result, the Applicant has a first ranking security interest over all of the Debtor's personal property.

[11] In paragraph 1(iv) of the GSA, the secured property of the Debtor includes:

(iv) all patents, industrial designs, trademarks, trade secrets, and know-how including without limitation confidential information, trade-names, goodwill, copyrights, software, and all other forms of intellectual and industrial property, and any registrations and applications for registration of any of the foregoing (collectively "Intellectual Property") and including, without limitation, the Intellectual Property listed in Schedule "A" attached hereto;

[12] Schedule “A” of the GSA, which lists the Intellectual Property referred to above, has no listed items. It simply says “nil.”

[13] There are two trademarks in issue on this motion. The Word Trademark, Holistic Blend (“the Word Trademark”) and the Design Trademark, Holistic Blend My Healthy Pet (“the Design Trademark” and together “the Trademarks”).

[14] The ownership and assignment of the Trademarks is in dispute. According to the Canadian Intellectual Property Office (“CIPO”), the Debtor is the registered owner of both the Word and Design Trademarks. CIPO records show that the Debtor has owned the Word Trademark since 2005 and renewed it in April 2015. The Word Trademark is also registered with the United States Patent and Trademark Office (“USPTO”) and shows the Debtor as the owner since 2009 with a renewal in May 2019. The Design Trademark was formally registered with CIPO on May 21, 2016.

[15] On September 30, 2014, the Debtor purported to assign the Word Trademark to 902 by way of a trademark assignment agreement. On May 1, 2015, the Debtor purported to assign the Design Trademark to 902 by way of a trademark assignment agreement. The consideration allegedly paid to the Debtor by 902 in both assignment agreements was \$10.00. Neither the CIPO nor the USPTO records were updated to reflect the assignment agreements.

[16] On May 2, 2015, Ms. Pelczynski, on behalf of both 388 and 902, signed an End User License Agreement (“the License Agreement”), which purported to grant a non-transferable and perpetual license from 902 to 388 to use the Trademarks.

[17] The Applicant submits that Ms. Pelczynski, on behalf of the Debtor, never disclosed that 902 was the owner of the Trademarks used in 388’s business. At the time the assignment agreements were signed, the Debtor owed Royal Bank approximately \$637,000. Ms. Pelczynski’s evidence on behalf of the Debtor was that she did not advise Royal Bank about the assignment of the Trademarks to 902.

[18] In April 2019, the Debtor began to experience serious financial problems. It was at this time that the Applicant first became aware of the alleged transfers, only two months prior to the Applicant having the Court appoint a Receiver over the Debtor’s property, and at a time when the Debtor was insolvent.

THE POSITIONS OF THE PARTIES

The Applicant

[19] The Applicant submits that Ms. Pelczynski, on behalf of the Debtor, lacks credibility. Her evidence should not be accepted, and the Trademarks should be included in the Debtor’s property, which is subject to the Receivership proceeding.

[20] The Applicant raises the following in support of its position that the Debtor owns the Trademarks:

- a. Ms. Pelczynski deposed that she told representatives of the Applicant about the transfer of the Trademarks at the time the GSA was signed in 2015. However, she was unable to produce any documents, notes, or e-mails to support this contention. There is only the bald assertion at paragraphs 40 and 41 of her affidavit sworn October 18, 2019 that 388 did not own the Trademarks and that there were “a number of e-mail communications to Bridging where I specifically explain 388’s relationship to 902 and the trademark usage.” While Ms. Pelczynski did produce some e-mails to Bridging, none mention the Trademarks. The first time she mentioned the Trademarks was in response to Mr. Champ’s question about My Healthy Pet in April 2019, long after the GSA was signed. Interestingly, Ms. Pelczynski initially tells Mr. Champ that both Trademarks are owned by 388 but sends another e-mail two minutes later correcting that to say that the Marks *were* owned by 388 but are now owned by 902.
- b. The consideration (\$10.00) set out in both of the assignment agreements is nominal and there is no evidence it was actually paid.
- c. Ms. Pelczynski renewed the Word Trademark with CIPO in April 2015 which post-dates the signing of the assignment agreement in September 2014.
- d. Ms. Pelczynski renewed the Word Mark with the USPTO in May 2019.
- e. No steps were taken to change the ownership of the Word Mark with either CIPO or the USPTO.
- f. The Design Mark was approved for advertising in Trademark journals by CIPO in June 2015. The Design Mark was not formally registered with CIPO until May 21, 2016. Therefore, the alleged assignment of the Design Mark was done at a time when Ms. Pelczynski was not the formal owner of the Design Mark.
- g. The term “Vendor” and “Licensee” are used throughout the licensing agreement. However, those terms are never defined in the agreement. The document is unclear as to who is licensing to whom.
- h. While stating in cross-examination that the assignments and the licensing agreement were prepared by and on the advice of her accountant and lawyer, she could not remember the name of those professionals, nor could she produce any e-mails or notes contemporaneous with their drafting.
- i. No financial statements of 902 were provided showing the Trademarks as an asset of that corporation.

- j. Ms. Pelczynski advised during her cross-examination that when things became financially difficult, she attempted to sell 388 to a private equity company (“Horizon”) and that she advised Horizon that 902 owned the Trademarks. However, the e-mails produced by Ms. Pelczynski between her and Horizon do not reveal any such discussion.
- k. Ms. Pelczynski deposed in her affidavit that she advised her previous lender, Royal Bank, that the Trademarks were to be “carved out” from the security given to RBC. However, the commitment letter from RBC makes no mention of such an exception.
- l. Ms. Pelczynski takes the position that the Receiver shares the view that 902 is the owner of the Trademarks. However, the Receiver has been clear that references in its report to this issue are based solely on information provided to it by Ms. Pelczynski.
- m. Ms. Pelczynski withdrew her claim for occupation rent the day before this motion and then withdrew her supplementary affidavit sworn January 8, 2020 on the day of the motion. The Applicant submits that the affidavit contained significant inconsistencies and that a negative inference should be drawn as to Ms. Pelczynski’s conduct in this litigation.

The Position of the Debtor

[21] Ms. Pelczynski, on behalf of the Debtor, takes the position that the Applicant relies on suspicion and inferences and has failed to meet its burden. There is good evidence of the ownership of the Trademarks by 902 as follows:

- a. Updating the CIPO and USPTO registers to reflect the assignment is not determinative and has no impact on the validity or enforceability of the assignment.
- b. 902 became the owner of the Trademarks prior to any relationship between the Debtor and the Applicant. Trademarks as assignable in law and the Applicant does not challenge the agreements as false or invalid.
- c. While the license agreement may not contain a definition of who is the Vendor and who is the Licensee, that is not fatal. The parties understood their rights under the agreement.
- d. Schedule “A” to the GSA is reflective of the parties’ discussions that 388 did not own any Intellectual Property. There is no evidence that the Applicant did any due diligence to determine if the “nil” notation was accurate. The Applicant could have searched the CIPO database but did not.
- e. The Applicant has not provided any evidence of e-mails between its agents and Ms. Pelczynski with respect to any discussions, or lack thereof, in relation to the Trademarks.

ANALYSIS AND ARGUMENT – THE OWNERSHIP ISSUE

[22] I find that the Applicant has met its burden and proven that the Trademarks are the property of the Debtor. The evidence of Ms. Pelczynski on behalf of the Debtor is not credible and is rejected for the following reasons:

- (1) The Applicant was not informed of the transfers until years after the signing of the GSA and at a time when the Debtor was insolvent. The fact that the Intellectual Property in Schedule A of the GSA is shown as Nil is therefore not determinative. I find that Ms. Pelczynski did not advise the Applicant about the Trademarks and therefore the Debtor cannot now rely on that omission. While purporting to have had both e-mail and verbal communication to confirm her discussions with the Applicant's agents, she is unable to provide any of those corroborating documents.
- (2) While not determinative, it cannot be ignored that Ms. Pelczynski did not update the CIPO or USPTO registers to reflect any assignment. In fact, she renewed the Design Mark on behalf of 388 as recently as last year. Third parties searching those databases would have no knowledge of any transfer.
- (3) While claiming that all of the agreements were prepared by, and on the advice of her lawyer and accountant, she can provide no proof of this. There are no drafts, letters, e-mails, or notes which would confirm any form of retainer or account for such services. Further, Ms. Pelczynski signs all of the agreements on behalf of the Debtor and 902. These were not arm's length transactions.
- (4) The Licensing Agreement was signed in May 2015 and the Word Mark was assigned to 902 in September 2014. This means that 388 would not have been able to use the Mark for some seven months before the Licensing Agreement was signed. There is no evidence that the Debtor stopped using the Word Mark for any period of time.
- (5) The Licensing Agreement does not identify who the Vendor is. One might assume it is 902, but it is only identified as the party of "First Part." I reject the Debtor's position that the parties "understood their rights." How can that be when there is confusion about which party is the vendor?
- (6) There is no evidence that Ms. Pelczynski advised either RBC or Horizon about the Trademarks.
- (7) Ms. Pelczynski purported to assign the Design Mark at a point in time when it had not yet been officially registered by CIPO.

- (8) Ms. Pelzynski's credibility was also in issue with respect to 902's motion. She failed to respond to the Receiver's requests for information about the O'Kat invoice. There is also suspicion raised by the Receiver about an alleged "disappearance" of accounts receivable after the Receiver's appointment and an alleged "confusion" about the inventory of the Debtor becoming the inventory of 902 after the receivership.
- (9) An act of registration does not determine the validity of an assignment. Registration is not necessary to perfect the assignment of a trademark (*Wilkinson Sword (Canada) Ltd. v. Juda* (1966), 34 Fox Pat. C. 77 (Can. Ex. Ct.)). The "owner" of a registered trademark has the exclusive right to its use whether or not they appear on the register as owner (*ibid*). In *Wilkinson Sword (Can.) Ltd.*, the court held that the effect of a transfer of a trademark is twofold: 1. the transferor, the former owner, immediately ceases to have any right to use the trademark to distinguish their goods because the exclusive right has, by virtue of ss. 19 and 47 [now s. 48], become vested in the transferee; and 2. the exclusive right to use the trademark in respect of the goods for which it was registered becomes vested in the transferee.

At common law, "no particular form is needed for an equitable assignment" of a trademark (*Bourbonnais & Odutola, Odutola on Canadian Trade-mark Practice and Procedure*, ch. 12, "Evidence of Transfer"). While there is no prescribed type of evidence to demonstrate an assignment, "Whatever the [assignment's] form, it must show transfer of rights in and to a trademark." (*ibid*, "Nature of Evidence"). Thus, while there are few formal requirements to create a valid trademark assignment, it appears that, based on the evidence, 388 acted in ways inconsistent with the claimed ownership of the trademarks.

[23] Overall, I find that Ms. Pelzynski lacks credibility. Her tendency was to make sweeping statements that her lenders knew about the Trademark, that 902 owned the Trademarks, and that all of the agreements were created based on professional advice. However, there was no evidence to support any of those statements other than Ms. Pelzynski's bald assertions in her affidavit.

THE FRAUDULENT CONVEYANCE RELIEF

[24] If I am wrong with respect to ownership of the Trademarks, I find that they were fraudulently conveyed by the Debtor. My reasons are set out below.

[25] The *FCA* is a remedial legislation and its language is to be given a broad interpretation. For s. 2 of the *FCA* to apply, there must be a "conveyance" of property, an "intent" to defeat; and, a "creditor or other" towards whom the intent is directed (*Indcondo Building Corporation v. Sloan*, 2014 ONSC 4018, 121 O.R. (3d) 160, at paras. 44, 49).

[26] For the first part of the test, 902 argues that the definition of property in the *FCA* does not include Trademarks. I disagree. In *Hydrotech Chemical Corporation v. Min-Chem Ltd.*, 1999 CanLII 4684 (Ont. C.A.), the court did not question the inclusion of a trademark as property under the *FCA*.

[27] It is also not necessary for the Applicant to show that there was any debt owed to it at the time of the impugned conveyance (see *Indcondo*, at paras. 47-48).

[28] As to the second part of the test, the Applicant must show that there was intent on the part of the Debtor to defeat the Applicant as a creditor. It is, of course, difficult to obtain evidence about intent, and as such, the case law has developed a list of factual circumstances which allow a court to draw an inference that such an intent existed. Those circumstances are often called “badges of fraud” and include situations in which:

- a. The donor continued to use the property as her own;
- b. The transaction was secret;
- c. The consideration is grossly inadequate; and
- d. A close relationship exists between the parties to the conveyance. (See *Indcondo*, at paras. 50-52.)

[29] Badges of fraud exist in this case. 902 and the Debtor have the same directing mind, the transfer was completed for nominal consideration, the Debtor continued to use the Trademarks and remains their registered owner as per the CIPO registry, and the Debtor assigned the Trademarks without informing RBC, Horizon, or the Applicant.

[30] 902 argues that the Marks were transferred well before this proceeding began and the assignments were made in good faith and for valid consideration. Yet, Ms. Pelczynski deposes in her cross-examination that the transfers took place for “tax and estate planning purposes.” She states she did not understand what this meant and relied solely on the advice of her advisors. But she is unable to produce any evidence about this advice.

[31] This court has already found that Ms. Pelczynski is not a credible witness. It is difficult to accept that she would have made the assignments to 902 based on professional advice, presumably paid for that advice, but had no idea why she was doing it. The more realistic interpretation is that she assigned the Trademarks to ensure they would stay out of the hands of her. The fact that she made the assignments prior to the Applicant’s involvement is not determinative as per *Indcondo*.

[32] Given all of the above, and if I am wrong with respect to the ownership of the Trademarks, the assignment of the Trademarks was a conveyance of property intended to defeat the Debtor’s creditors and is declared void as against the Applicant.

902’S MOTION FOR DISGORGEMENT OF FUNDS

[33] This motion was dismissed with costs at the conclusion of the hearing. My brief reasons follow.

[34] According to 902, in August 2019 it issued an invoice to one of its Taiwanese customers, O’Kat for \$27,795.19. O’Kat is a customer of both 388 and 902, and according to 902, O’Kat erroneously paid the invoice amount to 388.

[35] 902 wrote to the Receiver with a copy of the purchase order, invoice and Bill of Lading, and a letter from the CEO of O’Kat confirming an administrative error and requesting that the funds be redirected to 902.

[36] The Receiver argued that 902 has not sought the required leave for this motion as is required. The Receivership Order specifically precludes any enforcement process or proceeding against the Receiver without the written consent of the Receiver or leave of the court.

[37] The Receiver argued that the purchase order makes no reference to either 388 or 902. As O’Kat did business with both entities it would be logical that the purchase order showed which company was supplying the goods.

[38] In response to 902’s request for funds, the Receiver sent a letter to both 902 and O’Kat in October 2019. The letter to 902 specifically requests all records relating to the business relationship between O’Kat and the Debtor given that O’Kat did business with both companies. It sought copies of agreements, invoices, and transaction histories. There was never any response to this letter by either 902 or O’Kat nor was there any mention of the letter in Ms. Pelzynski’s affidavit sworn shortly after the date of the letter.

[39] In addition, the Receiver relies on an Answer to Undertaking given by the Debtor in which a spreadsheet shows a projected sale to O’Kat in August 2019 by 388 for the same items listed in the purchase order. While it is possible that 902 had an arrangement to provide exactly the same items to O’Kat, the Debtor never provided any documents to support that possibility.

[40] The Receiver submitted that the Debtor had failed to satisfy it that funds were owed to 902 and is now concerned about the Debtor directing 388’s business through 902.

[41] It is this court’s view that there is simply no documentation which would support the relief sought by 902. The invoice makes no reference to either 902 or 388. The bank transfer information from Bank Sinopac references “3886727 Canada Inc o/a Holisticblend,” and the spreadsheet provided as an undertaking shows an anticipated sale to 388 for the same products. Finally, there is the failure of 902 to respond to the specific information requested by the Receiver.

[42] I also find that 902 was obligated to obtain leave of this court before bringing their motion but failed to do so. Given all of the above, 902’s motion was dismissed.

ORDERS

[43] There shall be a declaration that any and all intellectual property used by the Debtor (3886727 Canada Inc.) is the property of the Debtor and is subject to the Applicant’s security interest and the Receivership proceeding.

[44] All issues relating to 902’s motion were dealt with by way of an order signed on January 9, 2020.

[45] The parties on the Applicant's motion may provide written submissions on costs of no more than two pages (exclusive of any Bill of Costs or Offers to Settle) on a seven-day turnaround after the release of these reasons and commencing with the Applicant. Costs shall be submitted electronically to my assistant at Therese.Navrotski@ontario.ca. If no costs submissions are received 35 days from the release of these Reasons, costs shall be deemed to be settled.

A handwritten signature in black ink, appearing to read "C. Gilmore J.", is positioned above a horizontal line.

C. Gilmore J.

Released: January 28, 2020

CITATION: Bridging Income Fund LP v. 3886727 Canada Inc., 2020 ONSC 602
COURT FILE NO.: CV-19-00620981-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Bridging Income Fund LP by its general partner SB
Fund GP Inc.

Applicant

– and –

3886727 Canada Inc. carrying on business as Holistic
Blend

Respondent

REASONS FOR DECISION

C. Gilmore, J.

Released: January 28, 2020

Appendix “E”

3886727 Canada Inc. o/a Holistic Blend

Final Statement of Receipts and Disbursements

For the period June 12, 2019 to January 21, 2022

(Unaudited; \$C)

Receipts

Funding under Receiver's Borrowing Charge	165,649
Transfers from Company's operating accounts	21,254
Interest	1,041
<i>Total Receipts</i>	<u>187,944</u>

Disbursements

Professional fees	127,760
HST disbursements	17,144
Advertising notice of first meeting of creditors	2,861
Legal disbursements	1,135
Other disbursements	11,669
<i>Total Disbursements</i>	<u>160,569</u>
<i>Balance in Receiver's account</i>	<u>27,376</u>

Appendix “F”

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

**BRIDGING INCOME FUND LP,
by its general partner SB FUND GP INC.**

APPLICANT

- AND -

**3886727 CANADA INC.,
carrying on business as HOLISTIC BLEND**

RESPONDENT

**AND IN THE MATTER OF THE RECEIVERSHIP OF 3886727 CANADA INC.,
CARRYING ON BUSINESS AS HOLISTIC BLEND**

**AFFIDAVIT OF NOAH GOLDSTEIN
(Sworn January 24, 2022)**

I, Noah Goldstein, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am a Vice President and Managing Director of KSV Restructuring Inc.¹ ("KSV").
2. Pursuant to an order (the "Receivership Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on June 12, 2019, KSV was appointed as the receiver and manager ("Receiver") of 3886727 Canada Inc., c.o.b. as Holistic Blend.
3. I have been integrally involved in this mandate since the date of the Receivership Order. As such, I have knowledge of the matters to which I hereinafter depose.
4. On January 24, 2022, the Receiver finalized its Second Report to Court in which it provided a summary of the Receiver's fees for the period from November 1, 2019 to January 21, 2022.

¹ On August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

5. I hereby confirm that attached as Exhibit "A" hereto are true copies of the invoices of KSV for the period indicated and confirm that these accurately reflect the services provided by KSV in this matter and the fees and disbursements claimed by it.

6. Additionally, attached hereto as Exhibit "B" is a summary of roles, hours and rates charged by members of KSV who have worked on this matter, and I hereby confirm that the list represents an accurate account of such information.

7. I consider the accounts to be fair and reasonable considering the circumstances connected with this matter.

8. I also confirm that the Receiver has not received, nor expects to receive, nor has the Receiver been promised any remuneration or consideration other than the amounts claimed in the accounts.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, this
24th day of January, 2022.



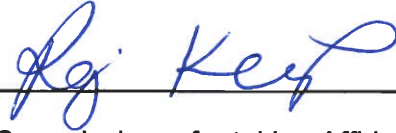
Commissioner for taking affidavits, etc.



NOAH GOLDSTEIN

Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires January 27, 2024.

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF NOAH GOLDSTEIN
SWORN BEFORE ME THIS 24th DAY OF JANUARY, 2022



A Commissioner for taking Affidavits, etc.

Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires January 27, 2024.



Noah Goldstein
kvs advisory inc.
150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9
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kvsadvisory.com
ngoldstein@kvsadvisory.com

INVOICE

3886727 Canada Inc., carrying on business as Holistic Blend
c/o KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

December 17, 2019

Invoice No: 1518
HST #: 818808768RT0001

Re: 3886727 Canada Inc., carrying on business as Holistic Blend (the "Company")

For professional services rendered by KSV Kofman Inc. ("KSV") in its capacity as Court-appointed receiver ("Receiver") of the Company during the period ending November 30, 2019, including:

- Corresponding with Aird & Berlis LLP, the Receiver's legal counsel, concerning matters related to the receivership;
- Corresponding with Canada Revenue Agency ("CRA") regarding the status of these proceedings and the Company's payroll tax, excise tax and corporate tax accounts;
- Corresponding with CRA regarding a payroll trust examination;
- Preparing a Report to Court (not yet filed) dealing with motions filed by Ms. Debbie Pelczynski;
- Corresponding with creditors;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 2,417.25
HST	314.24
Total	<u>\$ 2,731.49</u>

KSV Kofman Inc.
3886727 Canada Inc., carrying on business as Holistic Blend

Time Summary

For the period ending November 30, 2019

Personnel	Role	Rate (\$)	Hours	Amount (\$)
Noah Goldstein	Overall responsibility	575	1.00	575.00
Jonathan Joffe	All aspects of mandate	475	3.80	1,805.00
Other Staff and Administration				31.25
Subtotal - fees				2,411.25
Out-of-pocket disbursements				6.00
Total Fees and Disbursements				2,417.25



Noah Goldstein

kSV advisory inc.

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ngoldstein@kSVadvisory.com

INVOICE

3886727 Canada Inc., carrying on business as Holistic Blend
c/o KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

March 6, 2020

Invoice No: 1597

HST #: 818808768RT0001

Re: 3886727 Canada Inc., carrying on business as Holistic Blend (the “Company”)

For professional services rendered by KSV Kofman Inc. (“KSV”) in its capacity as Court-appointed receiver (“Receiver”) of the Company for the period December 1, 2019 to February 29, 2020, including:

- Corresponding with Aird & Berlis LLP (“Aird & Berlis”), the Receiver’s legal counsel, concerning matters related to the receivership;
- Reviewing a summary of refusals and undertakings (the “Summary”) in relation to the cross-examination of Debbie Pelczynski on her affidavit sworn October 19, 2019, conducted on December 3, 2019 by Chaitons LLP (“Chaitons”) as counsel to Bridging Income Fund LP (the “Applicant”).
- Corresponding with Aird & Berlis regarding the Summary and reviewing the Company’s books and records in relation to same;
- Preparing the Receiver’s first report to Court dated December 18, 2019 dealing with the Applicant’s Factum;
- Reviewing the motion materials filed in response to the motions filed by Ms. Pelczynski, including:
 - the Applicant’s Motion Record;
 - the Applicant’s Supplementary Motion Record;
 - the Applicant’s Factum;
 - Ms. Pelczynski’s Responding Record;
 - The Supplementary Affidavit of Ms. Pelczynski; and
 - the Applicant’s Brief of Authorities.

- Reviewing and commenting on the Receiver's Responding Statement of Law and the Receiver's Responding Brief of Authorities drafted by Aird & Berlis;
- Attending at Court on January 9, 2020 in respect of the motions filed by Ms. Pelczynski;
- Reviewing the Court order and endorsement dated January 9, 2020 (the "Court Order");
- Reviewing the Court's Reasons for Decisions dated January 28, 2020;
- Reviewing a Notice of Appeal filed by Ms. Pelczynski in relation the Court Order;
- Reviewing a letter dated February 13, 2020 from Chaitons to Ms. Pelczynski's counsel in response the Notice of Appeal;
- Preparing the Company's 2019 T4's and corresponding with the Company's former employees regarding same;
- Filing a T4 Summary with CRA;
- Corresponding with creditors;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 15,987.65
HST	<u>2,078.39</u>
Total	<u><u>\$ 18,066.04</u></u>

KSV Kofman Inc.
3886727 Canada Inc., carrying on business as Holistic Blend

Time Summary

For the period ending February 29, 2020

Personnel	Role	Rate (\$)	Hours	Amount (\$)
Noah Goldstein	Overall responsibility	625	15.00	9,375.00
Jonathan Joffe	All aspects of mandate	475-495	12.60	6,195.00
Other Staff and Administration				412.25
Subtotal - fees				15,982.25
Out-of-pocket disbursements				5.40
Total Fees and Disbursements				15,987.65



Noah Goldstein

kvs advisory inc.

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INVOICE

3886727 Canada Inc., carrying on business as Holistic Blend
c/o KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

December 16, 2021

Invoice No: 2454

HST #: 818808768RT0001

Re: 3886727 Canada Inc., carrying on business as Holistic Blend (the “Company”)

For professional services rendered by KSV Restructuring Inc.¹ (“KSV”) in its capacity as Court-appointed receiver (“Receiver”) of the Company during the period March 1, 2020 to December 15, 2021, including:

- Corresponding with Aird & Berlis LLP (“Aird & Berlis”), the Receiver’s legal counsel, concerning matters related to the receivership;
- Reviewing a trust claim filed by Canada Revenue Agency (“CRA”) on March 3, 2021 and corresponding with Aird & Berlis regarding same;
- Reviewing a Court order made on April 30, 2021 appointing PricewaterhouseCoopers Inc., LIT (“PwC”) as receiver and manager without security, of all the assets, undertakings and properties of Bridging Income Fund LP, the Applicant in the Company’s proceedings;
- Corresponding on June 7, 2021 with PwC regarding the CRA claim and the status of these proceedings;
- Corresponding with CRA regarding the status of their claim, including on October 7, October 19 and December 14, 2021;
- Preparing the Receiver’s interim report (“Interim Report”) as required pursuant to the *Bankruptcy and Insolvency Act*;
- Updating a schedule of the Company’s receipts and disbursements to be appended to the Interim Report;

¹ On August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc. The professionals dealing with this mandate remain unchanged.

- Drafting the Receiver's second report to Court regarding, *inter alia*, a motion to discharge the Receiver of its duties and obligations under the Receivership Order made June 12, 2019;
- Corresponding with creditors;
- Maintaining the Receiver's website created for these proceedings; and
- Maintaining an estate bank account and completing a monthly reconciliation of same;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 9,178.79
HST	<u>1,193.24</u>
Total	<u>\$ 10,372.03</u>

KSV Restructuring Inc.
3886727 Canada Inc., carrying on business as Holistic Blend

Time Summary

For the period March 1, 2020 to December 15, 2021

Personnel	Role	Rate (\$)	Hours	Amount (\$)
Noah Goldstein	Overall responsibility	650	4.00	2,600.00
Jonathan Joffe	All aspects of mandate	495	11.90	5,890.50
Other Staff and Administration				677.50
Subtotal - fees				9,168.00
Out-of-pocket disbursements (postage)				10.79
Total Fees and Disbursements				9,178.79



Noah Goldstein
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ngoldstein@ksvadvisory.com

INVOICE

3886727 Canada Inc., carrying on business as Holistic Blend
c/o KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

January 21, 2022

Invoice No: 2495
HST #: 818808768RT0001

Re: 3886727 Canada Inc., carrying on business as Holistic Blend (the "Company")

For professional services rendered by KSV Restructuring Inc. ("KSV") in its capacity as Court-appointed receiver ("Receiver") of the Company during the period December 16, 2021 to January 21, 2022, including:

- Corresponding with Aird & Berlis LLP ("Aird & Berlis"), the Receiver's legal counsel, concerning matters related to the receivership;
- Corresponding with PricewaterhouseCoopers Inc., LIT ("PwC"), the receiver and manager of Bridging Income Fund LP, the Applicant in the Company's proceedings;
- Drafting the Receiver's second report to Court regarding, *inter alia*, a motion to discharge the Receiver of its duties and obligations under the Receivership Order made June 12, 2019;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 6,594.42
HST	857.27
27Total	<u>\$ 7,451.69</u>

KSV Restructuring Inc.
3886727 Canada Inc., carrying on business as Holistic Blend

Time Summary

December 16, 2021 to January 21, 2022

Personnel	Role	Rate (\$)	Hours	Amount (\$)
Noah Goldstein	Overall responsibility	675	7.50	5,062.50
Jonathan Joffe	All aspects of mandate	495	3.00	1,485.00
Other Staff and Administration			0.30	45.00
Subtotal - fees				6,592.50
Out-of-pocket disbursements (postage)				1.92
Total Fees and Disbursements				6,594.42

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF NOAH GOLDSTEIN
SWORN BEFORE ME THIS 24th DAY OF JANUARY, 2022



A Commissioner for taking Affidavits, etc.

Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires January 27, 2024.

3886727 Canada Inc., c.o.b. as Holistic Blend
Schedule of Professionals' Time and Rates
For the Period November 1, 2019 to January 21, 2022

Personnel	Title	Duties	Hours	Billing Rate (\$ per hour)	Amount (\$)
Noah Goldstein	Managing Director	Overall responsibility	27.50	575-650	17,612.50
Jonathan Joffe	Senior Manager	All aspects of mandate	31.30	475-495	15,375.50
Other staff and administrative			7.79	125-200	1,166.00
Total fees					<u>34,154.00</u>
Total hours					66.59
Average hourly rate					\$ 512.90

Appendix “G”

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

B E T W E E N :

**BRIDGING INCOME FUND LP,
by its general partner SB FUND GP INC.**

Applicant

- and -

**3886727 CANADA INC.,
carrying on business as Holistic Blend**

Respondent

**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**

AFFIDAVIT OF KYLE PLUNKETT
(Sworn January 11, 2022)

I, **KYLE PLUNKETT**, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY AS FOLLOWS:

1. I am a lawyer at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP is acting as counsel for KSV Restructuring Inc. (previously know as KSV Kofman Inc.), in its capacity as Court appointed Receiver and Manager (the “**Receiver**”) and continues to do so.

2. Aird & Berlis LLP has prepared statements of account in connection with its mandate as counsel to the Receiver, detailing its services rendered and disbursements incurred, namely:

- (a) an account dated January 30, 2020 in the amount of \$21,208.06 in respect of the period from December 3, 2019 to January 28, 2020;
- (b) an account dated February 27, 2020 in the amount of \$2,831.79 in respect of the period from January 29, 2020 to February 25, 2020;
- (c) an account dated March 31, 2020 in the amount of \$522.34 in respect of the period from February 26, 2020 to March 27, 2020;
- (d) an account dated July 30, 2021 in the amount of \$1,234.53 in respect of the period from June 7, 2021 to July 27, 2021;
- (e) an account dated January 10, 2022 in the amount of \$1,881.45 in respect of the period from November 8, 2021 to January 5, 2022,

(the “**Statements of Account**”). Attached hereto and marked as **Exhibit “A”** to this Affidavit are copies of the Statements of Account. The average hourly rate of Aird & Berlis LLP is \$439.36.

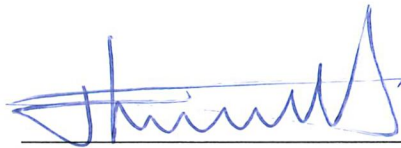
3. Attached hereto and marked as **Exhibit “B”** to this Affidavit is a chart detailing the lawyers, law clerks and articling students who have worked on this matter.

4. This Affidavit is made in support of a motion to, *inter alia*, approve the attached account of Aird & Berlis LLP and the fees and disbursements detailed therein and for no improper purpose.

SWORN before me at the City of)
Toronto, in the Province of Ontario,)
this 11th day of January, 2022)


A Commissioner, etc.

A. Collins



KYLE PLUNKETT

Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF KYLE PLUNKETT

Sworn before me

This 11th day of January, 2022

A handwritten signature in blue ink, reading "Jason Galli", is written over a horizontal line.

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 659538

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 41611/151241

January 30, 2020

Re: 3886727 Canada Inc. o/a Holistic Blend

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended January 28, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	03/12/19	\$395.00	0.10	\$39.50	Discussion with K. Plunkett re status and next steps
JTN	05/12/19	\$395.00	0.20	\$79.00	Engaged with receipt and high-level review of amended statement of defence re guarantee action to confirm no content re client
KBP	06/12/19	\$475.00	0.60	\$285.00	Review and consider draft report of receiver.
KBP	10/12/19	\$475.00	1.30	\$617.50	Review and provide comments on draft report.
JTN	11/12/19	\$395.00	0.40	\$158.00	Engaged with high-level review of draft report and corresponding draft Order; Email exchange with K. Plunkett re same
KBP	11/12/19	\$475.00	1.30	\$617.50	Revise and provide comments on draft first report; email exchange with N. Goldstein regarding same.
JTN	14/12/19	\$395.00	3.50	\$1,382.50	Engaged with review of, revisions to and further drafting of report; Email exchanges with client and K.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					Plunkett re same; Telephone call with K. Plunkett re same; Receipt and review of further turn of draft report by client
KBP	14/12/19	\$475.00	1.00	\$475.00	Review and respond to emails from client; review and respond to emails from J. Nemers regarding comments on report; review and consider comments on report;
JTN	15/12/19	\$395.00	0.20	\$79.00	Receipt and review of further changes to draft report by K. Plunkett
KBP	15/12/19	\$475.00	1.00	\$475.00	Revise and provide final comments on report; circulate same to client team.
JTN	16/12/19	\$395.00	0.50	\$197.50	Discussion with K. Plunkett re status and related matters; Engaged with review of fee affidavit and appendices thereto; Attend to related matters
JTN	17/12/19	\$395.00	0.80	\$316.00	Engaged with review of further drafts of report; Email exchanges and discussion with K. Plunkett re same; Email exchanges with client, S. Rappos and J. Rosekat re undertakings and under advisements; Attend to related tasks
KBP	17/12/19	\$475.00	1.60	\$760.00	Revise and provide comments on updated draft report; email exchange with S. Rappos regarding same; review and consider emails from N. Goldstein regarding report.
JTN	18/12/19	\$395.00	1.30	\$513.50	Prepare, review and finalize materials for service and attend to related matters and enquiries
KBP	18/12/19	\$475.00	1.10	\$522.50	Finalize and serve responding motion record; emails exchange with 902's counsel regarding same.
KBP	19/12/19	\$475.00	0.60	\$285.00	Review and respond to emails from S. Rappos regarding undertakings; attend call with N. Goldstein;

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
PLW	19/12/19	\$190.00	0.60	\$114.00	Set down motion
KBP	20/12/19	\$475.00	0.30	\$142.50	Draft response to S. Rappos regarding request for information; review and consider report for additional summary for client.
JTN	23/12/19	\$395.00	3.60	\$1,422.00	Engaged with drafting of statement of law re January court appearance; Email to K. Plunkett re same; Receipt and review of supplementary affidavit of B. Champ sworn today; Receipt and review of transcript from the cross-examination of D. Pelczynski; Receipt and review of exhibits to answers from undertakings and under-advisements; Email to client re same
JTN	24/12/19	\$395.00	0.10	\$39.50	Email exchange with K. Plunkett; Email to client
JTN	26/12/19	\$395.00	0.10	\$39.50	Email exchanges with N. Goldstein and J. Joffe
JTN	27/12/19	\$395.00	0.30	\$118.50	Receipt and review of factum from S. Rappos; Consider same
JTN	31/12/19	\$395.00	0.10	\$39.50	Discussion with K. Plunkett re facta, draft statement of law and related matters
JTN	02/01/20	\$435.00	1.90	\$826.50	Engaged with further review of case law; Engaged with revisions to draft statement of law; Discussion with K. Plunkett re same; Email to client re same and related matters; Engaged with physical assembly of brief of authorities; Attend to related matters
KBP	02/01/20	\$525.00	0.90	\$472.50	Review and consider factum of Bridging; review and provide comments on draft responding factum.
JTN	03/01/20	\$435.00	1.00	\$435.00	Receipt and review of email from L. McPherson re revised responding record; Email to client re same; Engaged with final revisions to and proofreading of statement of law;

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					Engaged with finalization of materials for service; Begin preparing for next week's hearing; Attend to related matters
JTN	06/01/20	\$435.00	1.10	\$478.50	Instruct A. Nguyen re filing of court materials for this week's hearing; Receipt and review of factum and brief of authorities from 902; Consider same; Telephone call with client re same; Discussion with K. Plunkett re same
ADN	06/01/20	\$295.00	1.10	\$324.50	Filing with the commercial list for J. Nemers
KBP	06/01/20	\$525.00	0.90	\$472.50	Review and consider supplemental materials served by 902; email exchange with client to discuss same;
JTN	07/01/20	\$435.00	2.00	\$870.00	Engaged with drafting of costs outline for Thursday's court attendance; Prepare for Thursday's court attendance; Discussion with K. Plunkett re same
JTN	08/01/20	\$435.00	2.00	\$870.00	Receipt and review of supplementary affidavit of D. Pelczynski sworn today; Consider same; Email to client re same; Discussion with K. Plunkett re same; Prepare for tomorrow's hearing
KBP	08/01/20	\$525.00	0.30	\$157.50	Review and consider supplemental affidavit of 902; discuss same with client.
JTN	09/01/20	\$435.00	7.50	\$3,262.50	Prepare for and attend at all-day disputed hearing
JCMC	10/01/20	\$295.00	1.30	\$383.50	Receive instruction from J. Nemers re: court attendance; Attend court to enter Order
JTN	10/01/20	\$435.00	0.40	\$174.00	Prepare trued-up copies of Orders from yesterday's court attendance; Instruct student re attendance at court to arrange for entry of same; Email to service list re same; Email exchange with client re cost award

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	20/01/20	\$435.00	0.10	\$43.50	Email to N. Goldstein re cost award
JTN	21/01/20	\$435.00	0.20	\$87.00	Email to 902's counsel re cost award; Attend to related matters as needed
JTN	22/01/20	\$435.00	0.10	\$43.50	Receipt and review of email from N. Goldstein re cost award
JTN	28/01/20	\$435.00	0.50	\$217.50	Engaged with review of Her Honour's decision; Consider same; Email exchanges with working group and court office re same
KBP	28/01/20	\$525.00	0.40	\$210.00	Review and consider decision of court re IP; discuss same with client and next steps for sale process.

TOTAL:	42.30	\$18,046.50
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Name	Hours	Rate	Value
Jeremy T. Nemers (JTN)	28.00	\$419.00	\$11,732.00
Kyle B. Plunkett (KBP)	11.30	\$486.06	\$5,492.50
Patrick L. Williams (PLW)	0.60	\$190.00	\$114.00
Andy D. Nguyen (ADN)	1.10	\$295.00	\$324.50
Jasmine C. Chung (JCMC)	1.30	\$295.00	\$383.50

OUR FEE	\$18,046.50
HST at 13%	\$2,346.05

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Court Fees	\$320.00
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Subject to HST

Binding and Tabs	\$23.50
Photocopies	\$175.50
Photocopies - Local	\$128.25
Imaging/Scanning	\$104.75
Travelling Expenses	\$6.50
Total Disbursements	\$438.50
HST at 13%	\$57.01

AMOUNT NOW DUE

\$21,208.06

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Ian E Aversa

E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

38721618.1

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 662369

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 41611/151241

February 27, 2020

Re: 3886727 Canada Inc. o/a Holistic Blend

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended February 25, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	29/01/20	\$435.00	0.50	\$217.50	Follow-up emails with 902's counsel re cost award; Meeting with K. Plunkett re next steps; Email exchange with S. Rappos and N. Goldstein; Attend to related matters
KBP	29/01/20	\$525.00	0.40	\$210.00	Discuss next steps with N. Goldstein and J. Nemers; review and consider emails to S. Rappos.
JTN	31/01/20	\$435.00	0.20	\$87.00	Receipt and review of email from N. Goldstein re costs; Telephone call with N. Goldstein and working group
JTN	03/02/20	\$435.00	0.30	\$130.50	Emails to N. Goldstein; Receipt and review of draft Order from S. Rappos; Consider same
KBP	03/02/20	\$525.00	0.20	\$105.00	Email exchange with working group regarding updates on responses from 902; discuss same with J. Nemers.
JTN	04/02/20	\$435.00	0.40	\$174.00	Email exchange with client re status update; Discussions with K. Plunkett re same; Receipt and review of

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					email from S. Rappos to court office; Email to client re same
JTN	05/02/20	\$435.00	0.10	\$43.50	Email exchanges with client and S. Rappos re draft order
JTN	06/02/20	\$435.00	0.50	\$217.50	Further email exchanges with client and S. Rappos re draft order; Receipt and review of notice of appeal from 902; Consider same; Email exchanges with client and K. Plunkett re same
KBP	06/02/20	\$525.00	1.00	\$525.00	Review and consider notice of appeal; email exchange with client regarding same.
JTN	12/02/20	\$435.00	0.50	\$217.50	Email exchanges with client re status update and next steps; Engaged with drafting of demand letter re 902
KBP	12/02/20	\$525.00	0.30	\$157.50	Email exchange with working group regarding demand for cost award.
JTN	13/02/20	\$435.00	0.10	\$43.50	Finalization and issuance of demand letter to 902's counsel re cost award
JTN	18/02/20	\$435.00	0.10	\$43.50	Receipt and review of email from S. Rappos re appeal
KBP	18/02/20	\$525.00	0.30	\$157.50	Review and consider various emails from Chaitons and Sparks regarding order for costs; email exchange with client regarding same.
JTN	20/02/20	\$435.00	0.20	\$87.00	Email exchange with S. Rappos re Court of Appeal-related matters; Discussion with K. Plunkett re related matters
JTN	24/02/20	\$435.00	0.10	\$43.50	Receipt and review of email from N. Goldstein re settlement discussions
JTN	25/02/20	\$435.00	0.10	\$43.50	Email to N. Goldstein
TOTAL:			5.30	\$2,503.50	

Name	Hours	Rate	Value
Jeremy T. Nemers (JTN)	3.10	\$435.00	\$1,348.50
Kyle B. Plunkett (KBP)	2.20	\$525.00	\$1,155.00

OUR FEE	\$2,503.50
HST at 13%	\$325.46

DISBURSEMENTS

Subject to HST

Photocopies - Local	\$1.25
Imaging/Scanning	\$1.25
Total Disbursements	\$2.50
HST at 13%	\$0.33

AMOUNT NOW DUE	\$2,831.79
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THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Ian E Aversa

E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

39035387.1

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 666139

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 41611/151241

March 31, 2020

Re: 3886727 Canada Inc. o/a Holistic Blend

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended March 27, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	26/02/20	\$435.00	0.10	\$43.50	Receipt and review of email from N. Goldstein re status
JTN	01/03/20	\$435.00	0.10	\$43.50	Follow-up email to J. Rosekat re cost award
JTN	02/03/20	\$435.00	0.20	\$87.00	Email exchange with J. Rosekat; Receipt and high-level review of commitment letter
KBP	02/03/20	\$525.00	0.30	\$157.50	Review and consider offer of settlement from debtor party; review and consider emails from client; review term sheet.
JTN	03/03/20	\$435.00	0.10	\$43.50	Receipt and review of email from J. Rosekat re continued non-payment of cost award in favour of Receiver; Email exchange with client re same
JTN	04/03/20	\$435.00	0.10	\$43.50	Receipt and review of cheque for cost award; Email to J. Rosekat and client re same
JTN	06/03/20	\$435.00	0.10	\$43.50	Receipt and review of notice of abandonment of appeal

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
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TOTAL:			1.00	\$462.00	
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Name	Hours	Rate	Value
Jeremy T. Nemers (JTN)	0.70	\$435.00	\$304.50
Kyle B. Plunkett (KBP)	0.30	\$525.00	\$157.50

OUR FEE	\$462.00
HST at 13%	\$60.06

DISBURSEMENTS

Subject to HST

Photocopies	\$0.25
HST at 13%	\$0.03

AMOUNT NOW DUE	<u>\$522.34</u>
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THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Ian E Aversa

E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

AIRD & BERLIS LLP
PAGE 3 OF ACCOUNT NO. 666139

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

39439442.1

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Invoice No.: 717156

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 41611/151241
Client No.: 41611
Matter No.: 151241

July 30, 2021

Re: 3886727 Canada Inc. o/a Holistic Blend

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended July 27, 2021

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	07/06/21	\$475.00	0.10	\$47.50	Email exchange with K. Plunkett re status update and next steps
JTN	10/06/21	\$475.00	1.00	\$475.00	Email exchange with J. Joffe re status; Engaged with revisions to and further drafting of discharge order and notice of motion; Attend to related matters and factual investigations re same
JTN	11/06/21	\$475.00	0.20	\$95.00	Email exchange and telephone call with J. Joffe
JTN	14/06/21	\$475.00	0.10	\$47.50	Email to J. Joffe
JTN	15/06/21	\$475.00	0.10	\$47.50	Email exchanges with J. Joffe
JTN	16/06/21	\$475.00	0.40	\$190.00	Telephone call with J. Joffe re outstanding questions and next steps re discharge motion
JTN	07/07/21	\$475.00	0.10	\$47.50	Email to client re timing; Email exchange with K. Plunkett re same
JTN	09/07/21	\$475.00	0.10	\$47.50	Email exchange with client

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	19/07/21	\$475.00	0.10	\$47.50	Email to client re status update
JTN	26/07/21	\$475.00	0.10	\$47.50	Telephone call with client re status
TOTAL:			2.30	\$1,092.50	

Name	Hours	Rate	Value
Jeremy T. Nemers (JTN)	2.30	\$475.00	\$1,092.50
OUR FEE			\$1,092.50
HST at 13%			\$142.03
AMOUNT NOW DUE			\$1,234.53

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Ian E Aversa

E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

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IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Invoice No.: 735709

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 41611/151241
Client No.: 41611
Matter No.: 151241

January 10, 2022

Re: 3886727 Canada Inc. o/a Holistic Blend

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended January 10, 2022

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	08/11/21	\$475.00	0.10	\$47.50	Email to client re status
JTN	24/11/21	\$475.00	0.20	\$95.00	Email exchange and telephone call with client re status
JTN	04/01/22	\$525.00	2.50	\$1,312.50	Engaged with review of, revisions to and further drafting of Second Report and attend to related matters; Email to client re same
JTN	05/01/22	\$525.00	0.40	\$210.00	Telephone call with client re Second Report and related matters

TOTAL:	3.20	\$1,665.00
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Name	Hours	Rate	Value
Jeremy T. Nemers (JTN)	3.20	\$520.31	\$1,665.00

OUR FEE	\$1,665.00
HST at 13%	\$216.45

TOTAL INVOICE	\$1,881.45
Monies applied from Trust	(\$1,881.45)

AMOUNT NOW DUE	\$0.00
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THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Ian E Aversa

E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF KYLE PLUNKETT

Sworn before me

This 11th day of January, 2022



Commissioner for taking Affidavits, etc

STATEMENT OF RESPONSIBLE INDIVIDUALS

Aird & Berlis LLP's professional fees herein are made with respect to the following individuals

Lawyer	Call to Bar	Hrly Rate	Total Time	Value
Nemers, J. T	2014	\$395.00 (2019)	11.20	\$4,424.00
		\$435.00 (2020)	20.60	\$8,961.00
		\$475.00 (2021)	2.60	\$1,235.00
		\$525.00 (2022)	2.90	\$1,522.50
Plunkett, K. B.		\$475.00 (2019)	8.80	\$4,180.00
		\$525.00 (2020)	5.00	\$2,625.00
Clerk/Student	Call to Bar	Hrly Rate	Total Time	Value
Williams, P.	N/A	\$190.00 (2019)	0.60	\$ 114.00
Nguyen, A. D.	N/A	\$295.00 (2020)	1.10	\$ 324.50
Chung, J. C.	N/A	\$295.00 (2020)	1.30	\$ 383.50

**Standard hourly rates listed. However, in certain circumstances adjustments to the account were made.*

BRIDGING INCOME FUND LP,
by its general partner SB FUND GP INC.
Applicant

AND

3886727 CANADA INC.,
carrying on business as Holistic Blend
Respondents

Court File No. CV-19-00620981-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF FEES

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754, 181 Bay Street
Toronto, Ontario M5J 2T9

Kyle Plunkett (LSO # 61044N)
Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

Jeremy Nemers (LSO # 66410Q)
Tel: (416) 865-7724
Fax: (416) 863-1515
Email: jnemers@airdberlis.com

Lawyers for the Receiver