

Court File No. CV-25-00745576-00CL

AMENDED THIS <u>May 19, 2026</u> PURSUANT TO MODIFIÉ CONFORMÉMENT À Ⓢ RULE/LA RÉGLE 26.02 (<u>a</u>) Ⓢ THE ORDER OF _____ L'ORDONNANCE DU _____ DATED/FAIT LE _____ REGISTRAR GREFFIER SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE D. Kimmerly Deborah L. Kimmerly REGISTRAR GREFFIER SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE	Digitally signed by Deborah L. Kimmerly Date: 2026.05.19 DN: cn=D. Kimmerly, o=COUR SUPÉRIEURE DE JUSTICE
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

BANK OF MONTREAL

Applicant

AND

**ADRIEL ORTINO CORP., ADD EQUIPMENT CORP., ADEN DISPOSAL
CORP., AE3 EXCAVATING CORP., AEON LANDSCAPING CORP., ALL
SEASONS GARDENING & MAINTENANCE LTD., ANTHONY'S
EXCAVATING AND GRADING LTD, HC & C CONTRACTING INC. AND
SHILSON EXCAVATION & TRUCKING INC.**

Respondents

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O.
1990, c. c-43, as amended**

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The claim made by the Applicant is set out on the following pages.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

1. In person
2. By telephone conference
3. By video conference

at the following location:

- 2 -

<https://ca01web.zoom.us/j/61804264297?pwd=MEpzRUtlUVB0UGc4eStsVGNtYmkxUT09%27>

Meeting ID: 618 0426 4297 Passcode: 057603

on: ~~a date to be established by the Ontario Superior Court of Justice (Commercial List) office.~~
May 21, 2026 at 11:00 A.M (ET).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: May 15, 2026

Issued by _____
Local Registrar

Address of Court Office:
330 University Avenue
Toronto, Ontario, Canada

TO: THE ATTACHED SERVICE LIST

1. **THE APPLICANT, MAKES APPLICATION FOR, *inter alia*:**

- (a) An Order (the “**Appointment Order**”), substantially in the form of Order attached at Tab 3 of the Application Record, ~~to be filed~~ among other things,
- (i) appointing KSV Restructuring Inc. as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the property, assets and undertakings (collectively, the “**Property**”) of Adriel Ortino Corp. (“**Adriel**”), ADD Equipment Corp. (“**ADD Equipment**”), Aden Disposal Corp. (“**Aden**”), AE3 Excavating Corp. (“**AE3**”), AEON Landscaping Corp. (“**AEON**”), All Seasons Gardening & Maintenance Ltd. (“**All Seasons**”), Anthony’s Excavating and Grading Ltd (“**Anthony’s**”), HC & C Contracting Inc. (“**HC & C**”) and Shilson Excavation & Trucking Inc. (“**Shilson**”, and together with Adriel, ADD Equipment, Aden, AE3, AEON, All Seasons, Anthony’s and HC & C, the “**Borrowers**”) pursuant to Section 243 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. C43, as amended (the “**CJA**”); ~~and~~
- (ii) authorizing the Receiver to enter into transaction(s) with third parties (each a “**Purchaser**”) in respect of certain landscaping equipment and ancillary construction equipment (the “**Equipment**”) used in the Borrowers business provided that the aggregate consideration for all such transactions does not exceed the amount of \$2,000,000, and, in the case of any individual transaction (a) the consideration for such transaction is less than \$250,000; and (b) any party the Receiver believes is asserting a valid purchase-money security interest over

Equipment subject to that transaction consents to the transaction (each an “Eligible Transaction”);

- (iii) vesting all of the applicable Borrower’s right, title and interest in and to the Equipment subject to an Eligible Transaction in the applicable Purchaser free and clear of and from any and all security interests, mortgages, trusts, deemed trusts, liens, executions, levies, charges or other financial or monetary claims upon the Receiver delivering to the Purchaser a “Sale Certificate” in the form attached as Schedule “B” to the Appointment Order; and

- (b) Such further and other relief as may be just and equitable.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

The Parties

- (a) The Borrowers historically operated a landscaping, excavating and contracting business through various private and closely held companies based in Ontario;
- (b) The registered office for each of the Borrowers is 3219 Yonge Street, Toronto, Ontario;

The Credit Facilities and Security

- (c) Bank of Montreal (“**BMO**”) has extended credit facilities (collectively, the “**Loans**”) to each of the Borrowers pursuant to a term sheet dated September 11, 2023 between BMO, as lender, and the Borrowers, as borrowers, as amended by an amendment to summary of terms and conditions dated as of January 15, 2024, and as further amended

- by an amendment to summary of terms and conditions dated as of June 19, 2024 (collectively, the “**Term Sheet**”);
- (d) All present and future debts, liabilities and obligations of each of the Borrowers under or in connection with the Term Sheet and the Loans extended thereunder are joint and several;
 - (e) Under the provisions of the Term Sheet, each of the Loans, with the exception of the treasury risk line (the “**TRL**”) (collectively, the “**Demand Facilities**”) are repayable by the Borrowers on demand by BMO;
 - (f) The TRL is governed by the terms of a ISDA 2022 Master Agreement between BMO and Adriel (the “**ISDA Master Agreement**”);
 - (g) Pursuant to the Term Sheet, each of the Borrowers provided BMO with, among other things, a general security agreement (collectively, the “**GSAs**”) in respect of all of the personal property of each of the Borrowers;

Demand and Termination of the ISDA Master Agreement

- (h) In late 2023, the Borrowers advised BMO that they were the victim of a financial fraud, allegedly perpetrated by the Borrowers’ previous bookkeepers (the “**Alleged Misappropriation Scheme**”). The Alleged Misappropriation Scheme resulted in, among other things, the alleged misappropriation by the Former Bookkeepers of contract revenues, and a significant overstatement of the Borrowers’ borrowing base

such that BMO's collateral was not sufficient to secure the indebtedness owing to the bank by the Borrowers;

(i) In May of 2025, the Borrowers breached the Term Sheet by failing to deliver to BMO certain financial reporting required under the Term Sheet;

~~(j) As of May 21, 2025, the Borrowers were indebted or otherwise liable to BMO in the amount of \$17,411,875.57 in respect of the Demand Facilities (the amounts owing from time to time by the Borrowers to BMO in connection with the Demand Facilities, the “Demand Indebtedness”);~~

(k) On May 22, 2025, BMO issued a demand letter (the “**Demand Letter**”), demanding repayment of all amounts owing by the Borrowers to BMO in respect of the Demand Facilities. The Demand Letter additionally enclosed notices of intention to enforce security under Section 244 of the BIA to each of the Borrowers (the “**NITES**”);

(l) On June 4, 2025, and in light of certain events of default having occurred under the Term Sheet, BMO issued a notice of default and early termination to Adriel, notifying Adriel that that all outstanding Transactions (as defined in the ISDA Master Agreement) under the ISDA Master Agreement and in connection with the TRL were being terminated as of June 5, 2025;

(m) On June 17, 2025, BMO commenced this Receivership Application by issuing a Notice of Application with the Ontario Superior Court of Justice (Commercial List) (the “**Court**”);

The Forbearance Agreements

- (n) On September 4, 2025, BMO and the Borrowers entered into a forbearance agreement (the “**First Forbearance Agreement**”), pursuant to which the Receivership Application was adjourned, and BMO agreed to forbear from demanding repayment of the Indebtedness from the Borrowers until January 31, 2026 (the “**Original Outside Date**”);
- (o) Following the passage of the Original Outside Date, BMO and the Borrowers entered into a second forbearance agreement dated February 2, 2026 (the “**Second Forbearance Agreement**”, and together with the First Forbearance Agreement, the “**Forbearance Agreements**”), pursuant to which BMO agreed to further forbear until May 31, 2026 (the “**Second Outside Date**”);
- (p) BMO agreed to enter into each of the Forbearance Agreements with the Borrowers in order to provide the Borrowers with additional time to attempt to (i) recover unbilled receivables, investigate double billings and pursue insurance claims resulting from the Alleged Misappropriation Scheme, and (ii) sell the Equipment. Ultimately, limited funds were recovered by the Borrowers, and the Borrowers made little to no progress in selling the Equipment;
- (q) Under the Second Forbearance Agreement, the Borrowers agreed that, should a liquidity shortfall arise at any time prior to the Second Outside Date, the Ortino family (the “**Family**”) was required to advance funds to cover such liquidity shortfall. On April 30, 2026, BMO notified Mr. Ortino of a liquidity shortfall in the amount of

\$60,000. The Family did not agree to advance funds sufficient to address the liquidity shortfall, and as a result, the Second Forbearance Agreement was terminated on its terms on May 8, 2026;

Receiver Appointment

- (r) Despite having been afforded a significant forbearance period, the Borrowers have failed to make any material paydown of the Indebtedness (as defined below), and BMO has lost confidence in Mr. Ortino and the Family to repay the Indebtedness in the near term;
- (s) As of ~~June 5, 2025~~ May 12, 2026, the Borrowers were indebted or otherwise liable to BMO in the amount of ~~\$61,586~~ \$18,498,786.30 ~~in respect of the TRL~~ (the amounts owing from time to time by the Borrowers to BMO ~~in respect of the TRL, the “TRL Indebtedness”, and together with the Demand Indebtedness, the “Indebtedness”;~~
- (t) The statutory notice period provided for under the BIA and outlined in the Demand Letter and the NITES has expired;
- (u) Under the terms and conditions of each of the GSAs, the Borrowers agreed that BMO would have the ability to appoint a receiver over the Property should the Borrowers be in breach of the Term Sheet;
- (v) It is just and convenient, at this time, for the Court to appoint a receiver over the Property;

Sale of Equipment

- (w) BMO is seeking approval for the Receiver to immediately market and sell the Equipment through an orderly and efficient process by which the Receiver shall be empowered to: (i) market the Equipment for individual sales to third party Purchasers; (ii) sell Equipment to Purchaser(s) provided that such transaction is an Eligible Transaction; (iii) vest title to purchased Equipment subject to an Eligible Transaction in a Purchaser free and clear of all liens and encumbrances upon the Receiver delivering to a Purchaser a Sale Certificate;

- (x) The authority for the Receiver to sell Equipment and issue Sale Certificate(s) is fair and appropriate in the circumstances. It preserves flexibility for the Receiver should the Receiver determine that piecemeal sales of the Equipment will maximize recovery for all stakeholders in the circumstances, and will avoid the Receiver being required to bring one or more motions to Court to seek the approval of individual Eligible Transactions in respect of the Equipment;

Other Grounds

- (y) Those other grounds set out in the affidavit of Michaela Wolf ~~to be~~ sworn May 15, 2026 (the “**Wolf Affidavit**”);

- (z) The provisions of the BIA, including Section 243;

- (aa) Section 101 of the CJA;

(bb) Rules 1.04, 3.02, 16.08, 17.02., 38, 39 and 41 of the *Rules of Civil Procedure*, R.R.O. 1990, c. C.43; and

(cc) Such further and other grounds as counsel may advise and this Honourable Court permit.

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

(a) The Wolf Affidavit and the exhibits thereto; and

(b) Such further material as counsel may advise and this Honourable Court may permit.

Date: ~~June 17, 2025~~

Amended on May 15, 2026

GOWLING WLG (CANADA) LLP

Barrister and Solicitors

Suite 1600, First Canadian Place

100 King Street West, Toronto, ON M5X 1G5

Thomas Gertner (LSO# 67756S)

Tel: (416) 369-4618

Email: thomas.gertner@gowlingwlg.com

Katherine Yurkovich (LSO# 80396R)

Tel: 416-862-4342

Email: kate.yurkovich@gowlingwlg.com

Lawyers for the Applicant

