Court File No.: CV-24-00721374-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

1000915701 ONTARIO INC., HOHS DRUGS LIMITED and HUAN DANG

Respondents

FACTUM OF THE RECEIVER
(Motion returnable July 24, 2025)

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TO: **THE SERVICE LIST**

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FACTUM OF THE RECEIVER

PART I – OVERVIEW

1. This Factum is filed by Grant Thornton Limited ("**GTL**"), in its capacity as Court-appointed receiver and manager (in such capacities, the "**Receiver**"), of the assets, undertakings and properties of 1000915701 Ontario Inc. ("**ResidualCo**"), and of all of the issued and outstanding shares (the "**Shares**") in the capital of HOHS Drugs Limited (the "**Company**" and together with ResidualCo, the "**Debtors**") and of the assets, undertakings and properties of the Company for an order (the "**Distribution and Discharge Order**"):

(a) if necessary, abridging and validating the time for service of the First Report of the Receiver dated July 15, 2025 and the Motion Record of the Receiver and dispensing with further service thereof;

(b) approving the Receiver's First Report, and the actions and activities of the Receiver described therein;

(c) approving the fees and disbursements of the Receiver and its counsel, Chaitons LLP ("**Chaitons**"), as described in the First Report and the fee affidavits appended thereto;

(d) approving an accrual of $125,000 for the fees incurred or to be incurred by the Receiver and Chaitons in connection with the completion of this receivership proceeding (the "**Receivership Proceeding**") and the bankruptcy proceeding of ResidualCo ("**Fee Accrual**");

(e) ordering that neither the Receiver nor Chaitons shall be required to pass their accounts in respect of any further fees and disbursements up to the amount of the Fee Accrual;

(f) authorizing and directing the Receiver to pay any balance remaining in the Fee Accrual, after payment of all fees and disbursements of the Receiver and Chaitons, to Bank of Montreal (the "**Bank**");

(g) approving the Receiver's final statement of receipts and disbursements for the period June 11, 2024 to July 14, 2025 appended to the First Report;

(h) authorizing and directing the Receiver to establish, hold, and maintain the following reserves (collectively, the "**Reserves**"): (i) $125,000, on account of the Fee Accrual (the "**Fee Accrual Holdback**"); (ii) $400,000, on account of the Revenue Adjustment (defined below) (the "**Revenue Adjustment Holdback**"); and (iii) $250,000 on account of the Claim Reserve (defined below) (the "**Claim Reserve Holdback**");

(i) authorizing and directing the Receiver, after payment of the professional fees and disbursements of the Receiver and Chaitons, and subject to maintaining the Reserves, to make the following interim distribution (the "**Initial Distribution**"):

  (i) to McKesson Canada Corporation ("**McKesson**"), the amount of $213,322.41 (net of costs allocated to McKesson's claim), in satisfaction of its purchase money security interest claim; and

(ii) to the Bank, as partial payment of the indebtedness owing to the Bank;

(j) authorizing and directing the Receiver to make subsequent distributions to the Bank from the Fee Accrual Holdback (to the extent not utilized to pay fees, disbursements and costs of the Receiver and Chaitons), the Revenue Adjustment Holdback (upon settlement of the Revenue Adjustment), the Claim Reserve Holdback (following the expiry of the Reserve Period (defined below)), and any other recoveries in respect of the Property, up to the amount of the Bank's indebtedness; and

(k) approving the release and discharge of the Receiver from any and all liability effective upon the Receiver filing a certificate confirming that the remaining duties have been completed.

2. Capitalized terms not defined in this Factum have the meaning ascribed to them in the First Report.

PART II – FACTS

Background

3. The Company is a corporation incorporated pursuant to the *Business Corporations Act* (Ontario) that operated two pharmacies: one from leased premises located at 260 Spadina Avenue, Toronto (the "**Manning Business**") and the other from leased premises located at 2737 Keele Street, Toronto (the "**Regency Business**").[1]

[1] First Report of the Receiver dated July 15, 2025 (the "**First Report**"), paras. 2-3.

4. Pursuant to the Order of the Honourable Justice Cavanagh dated June 11, 2024 (the "**Receivership Order**"), GTL was appointed Receiver of the Shares and all assets, undertakings and properties of the Company.[2]

5. The Bank applied for the Receivership Order. According to a statement of indebtedness provided by the Bank, as at July 13, 2025, the Company is indebted to the Bank in the amount of $5,821,165.63 (the "**Bank's Indebtedness**").[3]

Regency Transaction

6. On June 11, 2024, the Court granted an approval and vesting order (the "**Regency AVO**") authorizing the Receiver to execute the asset purchase agreement dated April 17, 2024 (the "**Regency APA**") between the Receiver and 1000801194 Ontario Inc. (the "**Regency Purchaser**") and the vesting of the Purchased Assets (as defined in the Regency APA) in the Regency Purchaser free and clear of all claims and encumbrances.[4]

7. The transaction contemplated by the Regency APA (the "**Regency Transaction**") was completed on June 26, 2024.[5]

Manning Transaction

8. On June 11, 2024, the Court granted an approval and vesting order (the "**Manning AVO**") authorizing, among other things,

[2] First Report, at para. 1.
[3] First Report, at para. 57.
[4] First Report, at para. 5.
[5] First Report, at para. 20.

(a) execution by the Receiver of the share purchase agreement dated April 4, 2024 (the "**Manning SPA**") between the Receiver and Frank Murgic Pharmacist Professional Corporation (the "**Original Manning Purchaser**"), or its assignee or nominee;

(b) addition of ResidualCo as a Respondent;

(c) vesting of all Excluded Assets, Excluded Liabilities and Excluded Contracts (each as defined in the Manning SPA) in ResidualCo;

(d) vesting of the Shares in the Original Manning Purchaser free and clear of all encumbrances; and

(e) release of the Company from the purview of the Receivership Order upon closing.[6]

9. The Manning AVO further provided that, effective on closing, all references in any order in this Receivership Proceeding to: (i) "Respondent" shall refer to ResidualCo; and (ii) "Property" shall include the assets, undertakings and properties of ResidualCo and all proceeds thereof.[7]

10. On June 20, 2024, the Original Manning Purchaser assigned its rights and entitlements under the Manning SPA to Murgic Pharmacist Professional Corporation (the "**Manning Purchaser**").[8]

11. The transaction contemplated by the Manning SPA (the "**Manning Transaction**") closed on June 28, 2024, and, as a result, ResidualCo became a Respondent in the Receivership Proceeding and the Company was released from the purview of the Receivership Order.[9]

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[6] First Report at para. 5.
[7] First Report at para. 6.
[8] First Report at para. 22.
[9] First Report at para. 25.

12. On February 27, 2025, GTL filed an assignment in bankruptcy in respect of ResidualCo and ResidualCo was deemed bankrupt on that date.[10]

Revenue Adjustment Holdback

13. Under the Manning SPA, the purchase price is subject to a reduction (the "**Revenue Adjustment**") if revenue from medications dispensed in the 12 months following closing of the Manning Transaction is less than $950,000 in accordance with the formula set out in the Manning SPA. The Revenue Adjustment shall not exceed $400,000.[11]

14. To facilitate the Initial Distribution, the Receiver seeks Court approval to establish the Revenue Adjustment Holdback which may be paid or distributed to the Bank, as determined by the Receiver, upon settlement of the Revenue Adjustment.[12]

Claim Reserve Holdback

15. Under the Manning SPA, $250,000 is being held by the Receiver (the "**Claim Reserve**") for one year from closing of the Manning Transaction (the "**Reserve Period**") to secure reimbursement of any costs or damages paid by the Manning Purchaser in connection with certain claims described in the Manning SPA.[13]

16. At the end of the Reserve Period, the Receiver must remit any remaining amount of the Claim Reserve to the Bank, or as the Bank may direct, in accordance with the Manning SPA.[14]

[10] First Report at para. 6.
[11] First Report, at paras. 38 and 40.
[12] First Report, at para. 41.
[13] First Report, para. 39.
[14] First Report, at para. 60.

17. To facilitate the Initial Distribution, the Receiver seeks Court approval to establish the Claim Reserve Holdback which may be paid or distributed to the Bank, as determined by the Receiver, following expiry of the Reserve Period.[15]

Priority Claims

18. The Receivership Order provides for a first charge on the Property in favour of the Receiver and Chaitons for their fees and disbursements (the "**Receiver's Charge**").[16]

19. No priority claims have been asserted by the Canada Revenue Agency ("**CRA**") for source deductions or by Service Canada under the *Wage Earner Protection Program Act*.[17]

20. The Receiver received a notice of reassessment which stated that the Company owed HST in the amount of $3,125,659.85. The Receiver has filed a notice of objection objecting to this notice of reassessment.[18]

21. Any amount owing to CRA for HST represents an Excluded Liability under the Manning SPA which was transferred to ResidualCo pursuant to the Manning AVO.[19]

22. As ResidualCo is now bankrupt, CRA's HST claim (if any) is an unsecured claim and does not affect the proposed distributions.[20]

[15] First Report at para. 41.
[16] Receivership Order dated June 11, 2024, Appendix "A" to the First Report; First Report at para. 62.
[17] First Report, at para. 37.
[18] First Report, at para. 34.
[19] First Report, at para. 35.
[20] First Report, at para. 36.

Claim of McKesson

23. McKesson claims a purchase money security interest ("**PMSI**") in respect of inventory it supplied to the Company and accounts receivable generated from it.[21]

24. Inventory supplied by McKesson was included in the Regency Transaction and the Manning Transaction, completion of which allowed for its efficient realization.[22]

25. As McKesson directly and indirectly benefitted from these proceedings, the Receiver is of the view that McKesson should bear an equitable portion of the costs of these proceedings. Under the cost allocation method proposed by the Receiver, McKesson bears the fees, disbursements and costs of these proceedings in the same proportion as its individual recovery compared to the total amount recovered in these proceedings (i.e. on a *pro rata* basis).[23]

Proposed Distributions

26. Accounting for the costs of the administration of the estate, the Receiver is of the view that $5,247,178 is available for distribution to the Bank and McKesson before the proposed Holdbacks (defined below).[24]

27. The Receiver seeks this Court's approval to make distributions (the "**Distributions**") first to McKesson in the amount of $213,322.41 (net of costs allocated to McKesson's claim) and second, to the Bank as a partial payment for the Bank's Indebtedness, after payment of all outstanding fees and disbursements of the Receiver and Chaitons and subject to the Receiver maintaining the Reserves.[25]

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[21] First Report, at para. 46.
[22] First Report, at para. 17.
[23] First Report, at paras. 51-53.
[24] First Report, at para. 42.
[25] First Report, para. 44.

Activities of the Receiver

28. Paragraph 61 of the First Report summarizes the Receiver's activities since the commencement of the Receivership Proceedings.[26] The Receiver has acted reasonably and prudently in carrying out its activities as set out in the First Report, and it is appropriate to approve the Receiver's activities as set out therein.

Fees of the Receiver and its Legal Counsel

29. During the period from June 3, 2024 to June 30, 2025, the professional fees of the Receiver were $125,183.55, comprised of fees of $110,635.91 plus disbursements of $146.00, plus HST of $14,401.64.[27] The fees of the Receiver's counsel for the period from June 30, 2024 to June 30, 2025 were $109,859.34, inclusive of disbursements and HST.[28]

30. The Receiver believes that the Fee Accrual of $125,000 is sufficient and necessary to cover the Receiver's fees and the fees of Chaitons to the completion of these proceedings.[29]

Discharge and Release

31. Following completion of the Remaining Duties described at paragraph 71 of the First Report, the Receiver will have completed its mandate.

32. Accordingly, upon the Receiver filing a certificate with the Court confirming that the Remaining Duties have been completed, the Receiver seeks an order discharging GTL as Receiver

[26] First Report, para. 61.
[27] First Report, para. 65.
[28] First Report, para. 66.
[29] First Report, para. 67.

and releasing any claims against it, other than by virtue of gross negligence or wilful misconduct, in order to avoid the costs of a motion solely for this purpose.[30]

PART III – ISSUES

33. The Receiver's motion raises the following main legal issues:

(a) Should the Court approve the proposed Distributions and Holdbacks?

(b) Should the Court approve the Receiver's First Report and the activities described therein?

(c) Should the Court approve the fees and disbursements of the Receiver and its counsel?

(d) Should the Court approve the discharge and release of GTL as Receiver?

PART IV – LAW AND ARGUMENT

The Proposed Distributions and Holdbacks are Appropriate

34. Orders granting distributions, including interim distributions, are routinely granted in insolvency proceedings, including receiverships.[31]

35. The Receiver obtained an opinion from its counsel confirming that the inventory agreements with McKesson created a security interest in favour of McKesson in, among other things: (a) all inventory supplied, sold or distributed to the Company or anyone on the Company's behalf by or on behalf of McKesson and all proceeds therefrom; and (b) all debts, accounts, receivables, claims,

[30] First Report, para. 72.
[31] *Ontario Securities Commission v. Bridging Income Fund L.P.*, 2022 ONSC 4472 at paras 8-10; *Abitibibowater Inc.*, 2009 QCCS 6461 at para. 71, and *GE Canada Real Estate Financing Business Property Co v. 1262354 Ontario Inc.* 2014 ONSC 1173 at para 53.

monies, demands and choses in action owing to the Company in respect of the inventory and proceeds arising as a result of their sale, exchange, lease or other disposition or other dealing, subject to certain assumptions and qualifications typically included in opinions provided to trustees or receivers in insolvency proceedings.[32]

36. The Receiver also obtained an opinion from its counsel regarding the validity of the Bank's security. The legal opinion stated that subject to the customary qualifications and assumptions set out therein, the security held by the Bank is valid.[33]

37. The Receiver is not aware of any other secured creditors or any other claim that ranks or may rank in priority to the Bank or McKesson (other than amounts secured by the Receiver's Charge).[34] The Bank is expected to suffer a significant shortfall in the amount owed to it.[35]

38. McKesson bears the fees, disbursements and costs of these proceedings on a *pro-rata* basis.[36] The Receiver's allocation methodology, described in the First Report, is reasonable and in accordance with general principles established by Canadian insolvency courts.[37] The Receiver submits that its method of allocating the costs of these receivership proceedings is fair, equitable and cost-effective in the circumstances, and one which appropriately takes into account the benefits to McKesson resulting from these proceedings.[38]

39. The Revenue Adjustment Holdback and the Claim Reserve Holdback are sufficient to satisfy any potential obligations arising due to a Revenue Adjustment under the Manning SPA and any claims

[32] First Report, para. 49.
[33] First Report, at para. 58.
[34] First Report, para. 43.
[35] First Report, para. 59.
[36] First Report, para 53.
[37] *In Re Hickman Equipment (1985) Ltd. (In Receivership)*, 2004 NLSCTD 164 at para 17; *JP Morgan Chase Bank N.A. v. UTTC United Tri-Tech Corp.*, 2006 CanLii 25352 at paras. 42-45 & 56; *Winnipeg Motor Express Inc. (Re)*, 2009 MBQB 204 (Man. Q.B.), at paras. 46 and 47.
[38] First Report, paras. 51- 52 & 55.

made against the Claim Reserve (if any). The Fee Accrual Holdback is also sufficient to fund the fees and disbursements of GTL and Chaitons required to complete the administration of these proceedings.[39]

40. The Reserves and Distributions strike an appropriate balance in the circumstances between facilitating timely distributions and protecting the interests of stakeholders. The Order sought by the Receiver also efficiently eliminates the need for a further motion to approve subsequent distributions.

41. The Receiver recommends approval of the Distributions proposed in the First Report for the reasons set out in paragraphs 42 to 60 of the First Report.

The Court Should Approve the First Report

42. This Court has the inherent jurisdiction to review and approve the activities of a court appointed receiver as set out in the receiver's reports.[40]

43. It has become common practice for court officers to bring motions to seek approval of their reports and the activities set out therein.[41] Court approval, among other things, allows the court officer to brings its activities before the court and present an opportunity to address concerns of stakeholders, while enabling the court to satisfy itself that the court's officer's activities have been conducted in a prudent and diligent manner.[42]

44. The activities of the Receiver have been reported to the court and stakeholders in the First Report. The Receiver's activities were all necessary and undertaken in good faith in accordance with

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[39] First Report at paras. 41, 67.
[40] *Leslie v. Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2015 BCSC 1855 at para 54.
[41] *Target Canada Co (Re)*, 2015 ONSC 7574 at para 2 [*Triple-I Capital Partners Limited v 12411300 Canada Inc*, 2023 ONSC 3400 at paras 65-66.
[42] *Target Canada Co (Re)*, *supra* note 40 at para 23; *Triple-I Capital Partners Limited v 12411300 Canada Inc*, *supra* note 40 at paras 65-66.

the Receivership Order and were in the best interests of the stakeholders. The Receiver has acted reasonably, prudently and not arbitrarily.

45. The Receiver therefore respectfully submits that the First Report and the activities described therein should be approved.

The Court Should Approve the Fees and Disbursements of GTL and its Counsel

46. Paragraph 21 of the Receivership Order provides that the Receiver and its counsel 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.[43]

47. In determining whether to approve the accounts of a Court-appointed receiver and its counsel, the Court will consider the overall value contributed, taking into account the following factors: (a) the nature, extent and value of the assets; (b) the complications encountered; (c) the degree of assistance provided by the debtor; (d) the time spent; (e) the receiver's knowledge, experience and skill; (f) the diligence and thoroughness displayed; (g) the responsibilities assumed; (h) the results of the receiver's efforts; and (i) the cost of comparable services when performed in a prudent and economic manner.[44]

48. The Receiver's and Chaitons' fee affidavits are appended to the First Report. The Receiver is of the view that the hourly rates charged by the Receiver's counsel are consistent with the rates charged by other law firms practicing in the areas of insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances.[45]

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[43] Receivership Order dated June 11, 2024, Appendix "A" to the First Report, at para 19.
[44] *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para 33.
[45] Fourth Report, para. 69.

49. The Receiver also believes that the Fee Accrual (in the amount of $125,000) is sufficient and necessary to cover its fees and the fees of Chaitons to the completion of these proceedings.[46] To the extent there is any surplus remaining from the Fee Accrual, the Receiver will distribute those funds to the Bank as partial payment of the Bank's Indebtedness.

50. The Receiver respectfully submits that it is appropriate to approve the fees and disbursements of GTL and its counsel Chaitons in the circumstances.

The Receiver's Discharge and Release Should be Approved

51. A court-appointed receiver is an officer and instrument of the Court. Typically, a court-appointed receiver is discharged by the court once it has completed the substance of its mandate. Creditors typically support the requested discharge at that time as they do not wish additional receivership expenses to be incurred which would reduce their recoveries.[47]

52. A receiver will typically seek a full release upon discharge because of the receiver's concern that, if it is discharged without a full release, it may be required to spend time and money defending unmeritorious actions commenced after its discharged. Once discharged, a receiver is unable to recover costs in defending such actions from the estate.[48] The purpose of the release provisions in the Model Discharge Order is to remove the necessity for the holding back of post-receivership funds and/or conducting of a "claims bar" process, both of which add time and cost to the receivership.[49]

53. Once the Receiver has completed the Remaining Activities, the Receiver will have completed its mandate. The Receiver therefore respectfully submits that these Receivership Proceedings should

[46] Fourth Report, para. 69.
[47] *Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.*, 2009 CanLII 55113 at para. 8.
[48] *Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.* *supra* note 46 at para. 8.
[49] *Ogopogo Beach Resort Ltd v Happy Valley Resort Ltd*, 2010 BCSC 996 at para. 39; *Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.* *supra* note 46 at para. 13.

be terminated, and the Receiver should be discharged and released, following the filing of the Discharge Certificate with the Court certifying that it has completed its remaining activities.[50]

54. The order contains standard provisions providing for the Receiver's release from liability upon its discharge (subject to the usual exceptions for gross negligence and wilful misconduct) and permitting the Receiver to continue to perform any incidental and necessary duties.

PART V – RELIEF SOUGHT

55. The Receiver respectfully recommends and requests that the Court grant the relief sought on this motion.

I certify the authenticity of every authority cited in the factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of July, 2025.

CHAITONS LLP
Lawyers for the Receiver, Grant Thornton Limited

[50] First Report, para. 72.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Ontario Securities Commission v. Bridging Income Fund L.P.*, 2022 ONSC 4472

2. *Abitibibowater Inc.*, 2009 QCCS 6461

3. *GE Canada Real Estate Financing Business Property Co v. 1262354 Ontario Inc.* 2014 ONSC 1173

4. *In Re Hickman Equipment (1985) Ltd. (In Receivership)*, 2004 NLSCTD 164

5. *JP Morgan Chase Bank N.A. v. UTTC United Tri-Tech Corp.*, 2006 CanLii 25352

6. *Winnipeg Motor Express Inc. (Re)*, 2009 MBQB 204 (Man. Q.B.)

7. *Leslie v. Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2015 BCSC 1855

8. *Target Canada Co (Re)*, 2015 ONSC 7574

9. *Triple-I Capital Partners Limited v 12411300 Canada Inc*, 2023 ONSC 3400

10. *Bank of Nova Scotia v Diemer*, 2014 ONCA 851

11. *Ed Mirvish Enterprises Limited v. Stinson Hospitality Inc.*, 2009 CanLII 55113

12. *Ogopogo Beach Resort Ltd v Happy Valley Resort Ltd*, 2010 BCSC 996

SCHEDULE “B”

STATUTORY AUTHORITIES

N/A.

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Proceeding commenced at Toronto

FACTUM

(Distribution and Discharge Order)
(Returnable July 24, 2025)

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