

Ontario

Superior Court of Justice

Commercial List

BETWEEN:

ICICI BANK CANADA

Applicant

- and -

2058756 ONTARIO LIMITED

Respondent

NOTICE OF MOTION

The Receiver, A. John Page & Associates Inc. will make a motion to a Judge sitting on the Commercial List on January 24, 2017 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, in substantially the form attached as **Schedule “A”** hereto, including, among other things, an order:
 - a. approving the conduct and activities of the Receiver to date as detailed in the Seventh Report of the Receiver dated December 6, 2016 (the “**Seventh Report**”);

- b. approving the Receiver's Statement of Receipts and Disbursements included in the Seventh Report;
 - c. approving and permitting a distribution in the amount of \$25,000 to the applicant, ICICI Bank Canada (the "**Bank**"), as first secured creditor;
 - d. approving the Receiver's conclusion that no portion of the Property Tax Refund (as defined in the Seventh Report) ought to be paid over to either Black & Decker Canada Inc. ("**Black & Decker**") and/or Camalor Manufacturing Inc. ("**Camalor**"), being former tenants of 2058756 Ontario Limited (the "**Debtor**") at the Brockville Property (hereinafter defined);
 - e. releasing the Receiver from any and all liability to Black & Decker and Camalor; and
 - f. approving the fees and expenses of the Receiver and its counsel; and
2. such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

3. The Receiver was appointed by Order of the Honourable Mr. Justice Brown on June 21, 2012 (the "**Initial Order**") over all of the assets, undertakings and properties of the Debtor, save and except for the property located at 700 Gardiners Road, Kingston, Ontario (the "**Kingston Property**");
4. The principal asset of the Debtor, apart from the Kingston Property, was real property comprising a 513,500 square foot industrial building located at 100 Central Avenue West, Brockville, Ontario (the "**Brockville Property**");
5. On April 25, 2013, Mr. Justice Wilton-Siegel made an order, which among other things, approved the sale of the Brockville Property to Stonewater Properties Inc. (the "**Purchaser**") and vested in the Purchaser, on closing, all of 205's right title and interest in the Brockville Property;
6. The sale of the Brockville Property closed on April 30, 2013;

7. Previously, the Receiver filed property tax assessment appeals and vacancy rebate claims;
8. In total, the Receiver recovered \$623,709.90 on account of previously paid property taxes and interest (the “**Property Tax Refunds**”);
9. The Receiver has assessed and concluded that no portion of the Property Tax Refunds ought to be paid over to either Black & Decker or Camalor;
10. To date, the total amount distributed to the Bank is \$1,270,000;
11. A distribution of a further \$25,000 is being requested to provide A. John Page & Associates Inc., as the prospective Licensed Insolvency Trustee, with a deposit to support the Bank’s guarantee of the costs of the bankruptcy of the Debtor, in the event that the bankruptcy order sought by the Bank is granted;

Statement of Receipts and Disbursements

12. The Receiver’s Interim Statement of Receipts and Disbursements for the cumulative period of June 21, 2012 to December 6, 2016 is attached to the Seventh Report, and the Receiver requests Court approval for that Interim Statement;

Professional Fees

13. The Receiver’s fees for March 1, 2015 and ending November 30, 2016 are \$43,915.07 plus HST, as set out in the Fee Affidavit of A. John Page sworn December 7, 2016;
14. The fees of Heath Whiteley for August 1, 2016 and ending November 30, 2016 are \$5,000.00 plus HST, as set out in the Fee Affidavit of Heath Whiteley sworn December 18, 2016;
15. The fees of Gardiner Roberts for March 1, 2015 and ending July 31, 2016 are \$18,165.00 plus disbursements of \$531.75, plus HST, as set out in the Fee Affidavit of Jonathan Wigley sworn December 7, 2016 and
16. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

17. The Seventh Report;
18. The fee affidavits of A. John Page, Heath Whiteley and Jonathan Wigley; and
19. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 6, 2017

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Independent counsel to the Receiver

Schedule "A"

Court File No. CV-12-9740-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE)	TUESDAY, THE 24 th DAY
)	
JUSTICE ■)	OF JANUARY, 2017

ICICI BANK CANADA

Applicant

- and -

2058756 ONTARIO LIMITED

Respondent

ORDER

THIS MOTION, made by A. John Page & Associates Inc., in its capacity as the court-appointed Receiver (the "**Receiver**") of certain of the assets, undertakings and properties of 205876 Ontario Limited (the "**Debtor**"), for an Order: (a) approving the conduct and activities of the Receiver to date (as detailed in the Seventh Report of the Receiver); (b) approving the Receiver's Statement of Receipts and Disbursements; (c) approving the Receiver's conclusion that no portion of the property tax refund ought to be paid over to either of the former tenants of the Debtor; (d) releasing the Receiver, and others, from any and all liability to the former tenants of the Debtor; and (e) approving the fees and expenses of the Receiver and its counsel; and such further and other relief as to this Honourable Court may seem just, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Seventh Report of the Receiver dated December 6, 2016 (the "**Eleventh Report**"), and the affidavits of A. John Page sworn

December 3, 2016 (the “**Receiver’s Fee Affidavit**”), Heath Whiteley sworn December 18, 2016 (the “**Whiteley Fee Affidavit**”) and Jonathan Wigley sworn December 7, 2016 (the “**Wigley Fee Affidavit**”), and on hearing the submissions of the lawyer(s) present on the motion, all parties per the service list on the notice of motion having been served as appears from the affidavit of Heath Whiteley sworn December ■, 2016.

1. **THIS COURT ORDERS** that service of the Notice of Motion and Motion Record herein upon any interested party not served is hereby dispensed with.

2. **THIS COURT ORDERS** that the activities of the Receiver to date as set out in the Seventh Report are hereby approved.

3. **THIS COURT ORDERS** that the receipts and disbursements of the Receiver as set forth in the Statement of Receipts and Disbursements contained in the Seventh Report be and the same are hereby approved.

4. **THIS COURT ORDERS AND DECLARES** that no portion of the portion of the Property Tax Refund (as defined in the Eleventh Report) shall be paid over to either of the former tenants of the Debtor.

5. **THIS COURT ORDERS AND DECLARES** that A. John Page & Associates Inc. is hereby released and discharged from any and all liability that A. John Page & Associates Inc. now has or may hereafter have to any and all former tenants of the Debtor by reason of, or in any way arising out of, the acts or omissions of A. John Page & Associates Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver’s part. Without limiting the generality of the foregoing, A. John Page & Associates Inc. is hereby forever released and discharged from relating to matters that were raised, or which could have been raised, in the within receivership proceedings by any and all tenants and former tenants of the Debtor, save and except for any gross negligence or wilful misconduct on the Receiver’s part.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized to pay to, or at the direction of, the Applicant, as first ranking secured creditor, the sum of \$25,000 from

the funds held by the Receiver as an interim distribution and, subject to payment of fees and disbursements of the Receiver and its counsel from time to time in accordance with the Order of Justice Brown dated June 21, 2012, and any subsequent orders of the Court, to hold the balance of the funds pending further order of this Court.

7. **THIS COURT ORDERS** that the fees of the Receiver for the period from March 1, 2015 and ending November 30, 2016 in the amount of \$43,915.07 plus applicable GST/HST as set forth in the Receiver's Fee Affidavit are hereby approved and allowed.

8. **THIS COURT ORDERS** that the fees of the Receiver's counsel for the period from August 1, 2016 and ending November 30, 2016 in the amount of \$5,000.00 plus applicable GST/HST as set forth in the Whiteley Fee Affidavit are hereby approved and allowed.

9. **THIS COURT ORDERS** that the fees of the Receiver's independent counsel for the period from March 1, 2015 and ending July 31, 2016 in the amount of \$18,165.00 plus disbursements of \$531.75 and applicable GST/HST as set forth in the Wigley Fee Affidavit are hereby approved and allowed.

B E T W E E N:

ICICI BANK CANADA
Applicant

- AND -

2058756 ONTARIO LIMITED
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

(PROCEEDING COMMENCED AT TORONTO)

NOTICE OF MOTION
(re Seventh Report)

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