

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 26TH DAY
JUSTICE W.D. BLACK) OF NOVEMBER, 2024

B E T W E E N:

HOME TRUST COMPANY

Applicant

- and -

VANDYK - BACKYARD HUMBERSIDE LIMITED

Respondent

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by msi Spergel Inc. in its capacity as the Court-appointed receiver ("**Spergel**" or the "**Receiver**") of the undertakings, properties and assets of Vandyk- Backyard Humberside Limited ("**VBHL**" or the "**Debtor**"), for an order:

1. if necessary, abridging and validating the time for and manner of service of the Notice of Motion and the Motion Record in the manner effected by the Receiver and an Order dispensing with service thereof on any party other than the parties served such that this motion is properly returnable on November 26, 2024;
2. approving the activities of the Receiver as set out in the Second Report of the Receiver dated November 7, 2024 (the "**Second Report**");
3. approving the Receiver's Final Statement of Receipts and Disbursements dated November 7, 2024;

4. approving the fees and disbursements of the Receiver and its counsel;
5. approving the payment into Court of the Disputed Funds, as defined in the Second Report;
6. approving the distribution of the remaining proceeds available in the estate of the Debtor and authorizing and directing the Receiver to proceed to make the distributions and set aside the reserves recommended by the Receiver in the Second Report;
7. discharging msi Spergel Inc. as Receiver of the undertakings, properties and assets of the Debtor; and,
8. releasing msi Spergel Inc. from any and all liability, as set out in paragraph 6 of this Order,

was heard this day at 330 University Avenue, Toronto, Ontario.


ON READING the Second Report, the affidavits of the Receiver and its counsel as to fees (the "**Fee Affidavits**"), and on hearing the submissions of counsel for the Receiver, the Second Mortgagee and the Third Mortgagee, no one else appearing although served as evidenced by the Affidavit of Service of Tanisha Lashley sworn November 8, 2024, filed;

1. THIS COURT ORDERS that the time for and manner of service of the Notice of Motion and the Motion Record be and is hereby abridged and validated and any further service thereof is hereby dispensed with such that the within Motion is properly returnable on this day.
2. THIS COURT ORDERS that the activities of the Receiver, as set out in the Second Report, are hereby approved.
3. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Second Report and the Fee Affidavits, are hereby approved.
4. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, the Receiver be and is hereby authorized to:

- (a) pay to Kay Family Investments Inc. (the second mortgage holder) the amount of \$37,500.00, in satisfaction of such party's secured claim for legal fees under the second mortgage; and,
- (b) pay the balance of the funds held by the Receiver, if any, to the third mortgage holder, Supertrin Commercial Properties Inc.

5. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 4 hereof and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Report, the Receiver shall be discharged as Receiver of the undertakings, properties and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of msi Spergel Inc. in its capacity as Receiver.

6. THIS COURT ORDERS AND DECLARES that msi Spergel Inc. is hereby released and discharged from any and all liability that msi Spergel Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of msi Spergel 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, msi Spergel Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.



HOME TRUST COMPANY
Applicant

-and- **VANDYK - BACKYARD HUMBERSIDE LIMITED**
Respondent

Court File No. CV-24-00715191-00CL

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PROCEEDING COMMENCED AT TORONTO

DISTRIBUTION AND DISCHARGE ORDER

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