

COURT FILE NUMBER 2201-03735
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 PLAINTIFF THE BANK OF MONTREAL
 DEFENDANTS THE INSTITUTE OF WELLNESS AND ADVANCED AESTHETICS LTD., WANDA LEE, THE ESTATE OF JONATHAN PATRICK LEE, 1608309 ALBERTA LTD., and MOUNT ROYAL SURGICAL CENTRE INC.

\$50.00
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 Mar 15 2023



DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: McCarthy Tétrault LLP
 4000, 421 – 7th Avenue SW
 Calgary, Alberta T2P 4K9
 Attention: Walker W. MacLeod
 Tel: 403-260-3710
 Fax: 403-260-3501
 Email: wmacleod@mccarthy.ca



NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard, as shown below:

Date: March 15, 2023
 Time: 10:00 a.m.
 Where: Calgary Law Courts (Virtual Courtroom via WebEx – see Schedule “A” hereto)
 Before Whom: The Honourable Justice B.B. Johnston

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought: Alvarez & Marsal Canada Inc. (the “**Receiver**”), in its capacity as the court-appointed receiver and manager of the assets, properties, and undertakings (collectively, the “**Property**”) of The Institute of Wellness and Advanced Aesthetics Ltd., 1608309 Alberta Ltd., and Mount Royal Surgical Centre Inc. (collectively, the “**Debtors**”) pursuant to the Receivership Order, granted by the Honourable Justice J.T. Neilson on April 1, 2022 (the “**Receivership Order**”), in the within proceedings (the “**Proceedings**”) applies for an Order, substantially in the form attached as Schedule “B” hereto:

Service

1. If necessary, declaring that the time for service of this application (the “**Application**”) and the Third Report of the Receiver, dated March 6, 2023 (the “**Third Receiver’s Report**”), is abridged, that the Application is properly returnable on March 15, 2023, that service of the Application and the Third Receiver’s Report, on the service list, is good and sufficient, and that no persons other than those on the service list are entitled to service of the Third Receiver’s Report, the Application, or any orders arising therefrom.

Discharge

2. Approving the Receiver’s final statement of receipts and disbursements with respect to the Debtors, as set out in paragraph 10 of the Third Receiver’s Report.

3. Approving the final accounts of the Receiver and its legal counsel with respect to the Debtors, as set out in paragraph 21 and Appendix “B”, of the Third Receiver’s Report.

4. Declaring that, as of the date of the Third Receiver’s Report and based on the evidence that is currently before the Court:

- (a) the actions and conduct of the Receiver are approved;
- (b) the Receiver has satisfied all of its duties and obligations as receiver and manager of the Debtors and the Property;
- (c) the Receiver shall not be liable for any act or omission including, without limitation, any act or omission pertaining to the discharge of the Receiver’s duties as receiver and manager of the Debtors or the Property, save and except for any liability arising out of fraud, gross negligence, or wilful misconduct on the part of the Receiver; and,
- (d) any and all claims against the Receiver arising from, relating to, or in connection with, the performance of the Receiver’s duties and obligations, as receiver and manager of the Debtors and the Property, save and except for any claims based on fraud or wilful misconduct, on the part of the Receiver, shall be forever barred and extinguished.

5. Ordering and declaring that, effective immediately upon the Receiver filing a certificate with this Honourable Court confirming that all funds have been distributed, in accordance with any Order issued in connection with this Application, the Receiver shall be discharged as receiver and manager of the Debtors and the Property and relieved of all further duties and obligations, in respect of both the Debtors and the Property.

6. Declaring that, notwithstanding the discharge of the Receiver, the Receiver remains empowered with residual jurisdiction to perform any act necessary or incidental to the conclusion of the receivership of the Debtors or the Property.

7. Declaring that no action or proceeding arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations, as receiver and manager of the Debtors or the Property, may be commenced or continued, without the prior leave of this Honourable Court, on notice to the Receiver, and on such terms as this Honourable Court may direct.

Miscellaneous Matters

8. Authorizing and empowering the Receiver to destroy any and all documents, accounting records, and other papers, records, and information related to the business or affairs of the Debtors, if not collected by any of the prior directors of the Debtors on or before April 15, 2023.

9. Ordering and declaring that service of any orders arising from this Application by email, facsimile, registered mail, courier, regular mail, or personal delivery, to the persons listed on the service list, present at the Application, or who were otherwise served with the Application, shall constitute good and sufficient service of such orders and that no persons other than those on the service list are entitled to be served with a copy of such orders.

10. Such further and other relief as counsel for the Receiver may advise and this Honourable Court considers to be just and appropriate in the circumstances.

Grounds for Making this Application: The grounds for the Application are as follows:

Background

11. The Receiver was appointed as the receiver and manager of the Debtors and their Property, pursuant to the Receivership Order.

12. Pursuant to the Receivership Order, the Receiver is authorized to, among others:

- (a) 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 \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and, (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds such amounts;
- (b) receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (c) manage, operate and carry on the business of the Debtors, 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 Debtors;
- (d) apply for any vesting order or other orders (including, without limitation, confidentiality or sealing 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;
- (e) market any or all 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;
- (f) settle, extend, or compromise any indebtedness owing to or by the Debtors; and,
- (g) borrow, by way of a revolving credit or otherwise, such monies as the Receiver may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as may be subsequently authorized) (the "**Receiver's Borrowings**") for the purpose of funding the exercise of the powers and duties conferred upon the Receiver.

13. Pursuant to the Receivership Order, the Receiver and counsel to the Receiver were granted a charge (the "**Receiver's Charge**") on the Property, up to a maximum amount of

\$150,000, as security for their professional fees and disbursements incurred both before and after the date of the Receivership Order in respect of these Proceedings, and in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the BIA.

14. Furthermore, pursuant to the Receivership Order, the Receiver's Borrowings were secured by way of a court-ordered fixed and specific charge (the "**Receiver's Borrowings Charge**"), in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any person, but subordinate only to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

15. Upon the commencement of these Proceedings, the Debtors' Property consisted of: (i) a leased medical facility (the "**Leased Premises**") located at the civic address of 301 – 3007 14th Street SW Calgary, Alberta; and, (ii) non-surgical aesthetic equipment, furniture and other surgical and non-surgical inventory (the "**Inventory**"), along with all corresponding assets, property, leases, contracts, fixtures, and chattel associated with the operation of same.

Administration of the Estate of the Debtor

16. On May 26, 2022, this Honourable Court granted an order in these Proceedings directing Ms. Yan, a real estate agent, and Vanovirmiere Realty Inc. to respond to inquiries made by the Receiver in respect of the Multiple Service Listing property identified as "123 Medical", as the MLS Listing appeared to be substantially similar to the Leased Premises.

17. Subsequently, on July 7, 2022, this Honourable Court granted the following two (3) Orders in these Proceedings:

- (a) an Order (Sale Approval and Vesting Order) (the "**Sale Approval Order**"), which, *inter alia*, approved: (i) the sale transaction for the sale of all of the right, title, estate and interest of the Debtors in and to the business commonly known as the Institute of Wellness and Advanced Aesthetics, operating out of the Leased Premises (the "**Transaction**") dated June 24, 2022 (the "**APA**"), between the Debtors by and through the Receiver in its capacity as court appointed receiver and manager of the assets, properties and undertaking and not in its personal or corporate capacity, as vendor, and 2440656 Alberta Corporation (the "**Purchaser**"), as purchaser; and, (ii) assigned the lease between the Debtors and Certus

Developments Inc. (the “**Landlord**”) with respect to the Leased Premises to the Purchaser;

- (b) an Order (**Distribution**), which, *inter alia*, authorizing and empowering the Receiver to make distributions to BMO in an amount sufficient to irrevocably repay all indebtedness, liabilities and obligations owing by the Debtors to BMO, including, without limitation, all principle, interest, fees owing to BMO, all costs and expenses incurred by BMO and all legal fees and costs charged to BMO on a solicitor and own client, full indemnity basis (the “**Distribution Order**”); and,
- (c) an Order (**Fee and Conduct Approval and Sealing Order**), approved the actions and conduct of the Receiver, as reported in the Second Report of the Receiver, dated June 27, 2022, and First Supplement to the Second Report of the Receiver, dated July 7, 2022 and sealed the Confidential Appendixes “1” to “3” to the Second Receiver’s Report, dated June 27, 2022.

18. The APA and the Transaction successfully closed on June 24, 2022.

19. Following the close of the Transaction, a dispute arose between the Purchaser and the Debtors regarding the Property and the APA (the “**APA Dispute**”). Particularly, the APA Dispute involved the specific the assets purchased pursuant to the APA and the list of assets provided to the Purchaser as part of the sales process conducted by the Receiver. As a result of such dispute, the Receiver agreed to hold a sum of \$62,000 (the “**Subject Funds**”) on the conditions agreed to by both parties. The Receiver subsequently settled the APA Dispute, pursuant to a Mutual Settlement and Release, pursuant to which the Receiver paid the Purchaser a settlement amount of \$15,000 (the “**APA Settlement**”).

Distribution

20. Following the closing of the Transaction and the APA Settlement, the Receiver holds approximately \$190,000 in proceeds, of which approximately \$140,000 is available for distribution, and is to be distributed by the Receiver in accordance with this Order and the Distribution Order.

Discharge of the Receiver

21. Following the closing of the Transaction and the sale of the Property, all assets of the Debtors have been dealt with and any and all funds belonging or owing to the Debtors have now been gathered or otherwise dealt with. Upon the Receiver's distribution, as set out in the Third Receiver's Report, any and all Property and all funds gathered, on account of the Debtors, will have been distributed or otherwise dealt with. As such, the administration of the estate of the Debtors is complete and it is appropriate for the Receiver to be discharged.

22. Such further and other considerations, as counsel may advise and this Honourable Court considers just and appropriate in the circumstances.

Affidavit or other Evidence and Materials to be used in Support of this Application:

23. The First Report of the Receiver, dated May 25, 2022, filed.

24. The Second Report of the Receiver dated June 27, 2022, filed.

25. The First Supplement to the Second Report of the Receiver, dated July 7, 2022, filed.

26. The Third Receiver's Report, dated March 6, 2023.

27. All such further reports, confidential reports, supplements, appendices, affidavits, and pleadings filed in the within Proceedings.

28. Such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

29. Rule 6.3, 6.9, 6.28, and 11.27 of the *Alberta Rules Of Court*, Alta. Reg. 124/2010.

30. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

31. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

32. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied On:

33. There are no irregularities complained of or objections relied on.

How the Application is Proposed to be Heard or Considered:

34. The Receiver proposes that this Application be heard via WebEx with one, some, or all of the parties present.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE “A” TO THE APPLICATION WEBEX INSTRUCTIONS

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, **you must** complete the undertaking located here:

<https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit:
<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

**SCHEDULE "B" TO THE APPLICATION
ORDER (DISCHARGE ORDER)**

COURT FILE NUMBER 2201-03735
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF THE BANK OF MONTREAL

Clerk's Stamp

DEFENDANTS THE INSTITUTE OF WELLNESS AND ADVANCED
AESTHETICS LTD., WANDA LEE, THE ESTATE OF JONATHAN
PATRICK LEE, 1608309 ALBERTA LTD., and MOUNT ROYAL
SURGICAL CENTRE INC.

DOCUMENT **ORDER (Discharge)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, Alberta T2P 4K9
Attention: Walker W. MacLeod
Tel: 403-260-3710
Fax: 403-260-3501
Email: wmacleod@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: March 15, 2023
LOCATION OF HEARING OR TRIAL: Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER: Justice B.B. Johnston

UPON the application (the "**Application**") of Alvarez & Marsal Canada Inc. (the "**Receiver**"), in its capacity as the court-appointed receiver and manager of the assets, properties, and undertakings (collectively, the "**Property**") of The Institute of Wellness and Advanced Aesthetics Ltd., 1608309 Alberta Ltd., and Mount Royal Surgical Centre Inc. (collectively, the "**Debtors**") pursuant to the Receivership Order, granted by the Honourable Justice J.T. Neilson on April 1, 2022 (the "**Receivership Order**"), in the within proceedings (the "**Proceedings**"); **AND UPON** reading the Third Report of the Receiver, dated March 6, 2023 (the "**Third Receiver's Report**"), filed; **AND UPON** reading the Affidavit of Service of ●, sworn on ●, 2023 (the "**Service Affidavit**"), filed; **AND UPON** hearing counsel for the Receiver and for any other parties who may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application, and the Third Receiver's Report is abridged, the Application is properly returnable today, service of Application, and the Third Receiver's Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Third Receiver's Report.

APPROVAL OF ACCOUNTS & ACTIVITIES

2. The Receiver's accounts for its fees and disbursements, as set out in paragraph 21 and Appendix "B" of the Third Receiver's Report, are hereby approved, without the necessity of a formal passing of its accounts.

3. The accounts of the Receiver's legal counsel, McCarthy Tétrault LLP, for its fees and disbursements, as set out in paragraph 21 and Appendix "B" of the Third Receiver's Report, are hereby approved, without the necessity of a formal assessment of its accounts.

4. The Receiver's activities, as set out in the Third Receiver's Report and in all of its other reports, supplements, affidavits, pleadings, and materials, filed in these Proceedings, and the final statement of receipts and disbursements as set out in paragraph 10 of the Third Receiver's Report, are hereby ratified and approved.

DISCHARGE OF THE RECEIVER

5. On the evidence before this Honourable Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within Proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.

6. No action or other proceedings shall be commenced against the Receiver in any way arising from or relate to its capacity or conduct as Receiver, except with prior leave of this Court, on notice to the Receiver, and upon such terms as this Court may direct.

7. Upon the Receiver filing with the Clerk of the Court a certificate, substantially in the form attached as Schedule "A" hereto, confirming that all authorized distributions have been completed, the Receiver shall be discharged as Receiver of the Debtors and the Property, provided however that notwithstanding the Receiver's 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 or these Proceedings; and,
- (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in these Proceedings, including all approvals, protections, and stays of proceedings in favour of the Receiver, in its capacity as Receiver.

8. The Receiver is hereby authorized and empowered to destroy any and all documents, accounting records, and other papers, records, and information related to the business or affairs of the Debtors, if not collected by any of the prior directors of the Debtors, on or before April 15, 2023.

MISCELLAENOUS MATTERS

9. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by Facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

10. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.C.K.B.A.

**SCHEDULE "A" TO THE ORDER (DISCHARGE ORDER)
RECEIVER'S DISCHARGE CERTIFICATE**

Clerk's Stamp

COURT FILE NUMBER 2201-03735

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF THE BANK OF MONTREAL

DEFENDANTS THE INSTITUTE OF WELLNESS AND ADVANCED
AESTHETICS LTD., WANDA LEE, THE ESTATE OF JONATHAN
PATRICK LEE, 1608309 ALBERTA LTD., and MOUNT ROYAL
SURGICAL CENTRE INC.

DOCUMENT RECEIVER'S DISCHARGE CERTIFICATE

ADDRESS FOR SERVICE McCarthy Tétrault LLP
AND CONTACT 4000, 421 – 7th Avenue SW
INFORMATION OF Calgary, Alberta T2P 4K9
PARTY FILING THIS Attention: Walker W. MacLeod
DOCUMENT: Tel: 403-260-3710
 Fax: 403-260-3501
 Email: wmacleod@mccarthy.ca

RECEIVER'S DISCHARGE CERTIFICATE

1. All capitalized terms used in this Receiver's Discharge Certificate and not otherwise defined shall have the meaning ascribed to them in the Order issued by The Honourable Justice • of the Court of King's Bench of Alberta, in the within proceedings, granted on • (the "**Discharge Order**").
2. Pursuant to the Discharge Order, the Court provided for the discharge of the Receiver, upon the filing of this certificate, by the Receiver, confirming that all remaining and residual funds have been distributed in accordance with the Discharge Order and the Order granted in the within proceedings on July 7, 2022 (the "**Distribution Order**").

THE RECEIVER HEREBY CONFIRMS AND CERTIFIES THE FOLLOWING:

1. All remaining and residual funds have been distributed in accordance with the Distribution Order and the Discharge Order, as applicable.

DATE THIS _____ DAY OF _____, 2023

ALVAREZ & MARSAL CANADA INC., in its capacity as receiver and manager of the undertaking, property and assets of **THE INSTITUTE OF WELLNESS AND ADVANCED AESTHETICS LTD., 1608309 ALBERTA LTD., AND MOUNT ROYAL SURGICAL CENTRE INC.**, and not in its personal or corporate capacity.

Per: _____
Name:
Title: