Court File No. CV-10-8991-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

BANK OF MONTREAL

Applicant

and

2110458 ONTARIO LIMITED, 2131413 ONTARIO LIMITED, 787755 ONTARIO LIMITED AND TARBRAC HOLDINGS INC.

Respondents

APPLICATION UNDER SUBSECTION 47(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

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge presiding over the Commercial List at 330 University Avenue, Toronto, Ontario on November 10, 2010, at 2:00 p.m. or as soon after that time as the matter can be heard on the application of the Applicant.

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 38A 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 at least two days 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: November 10, 2010

Issued by ______________________
Local registrar

Address of court office: 330 University Avenue
Toronto, Ontario M5G 1R7

TO:	**Himelfarb Prozanski LLP** 480 University Avenue, Suite 1401 Toronto, Ontario M5G 1V2 Tel: (416) 599-8080 Fax: (416) 599-3131 **Attention: Richard Quance** **Email: richard@himprolaw.com** Lawyers for 2110458 Ontario Limited, 2131413 Ontario Limited, 787755 Ontario Limited and Tarbrac Holdings Inc.
AND TO:	**Borden Ladner Gervais LLP** Scotia Plaza 40 King Street West Toronto, Ontario M5H 3Y4 Tel: (416) 367-6000 Fax: (416) 367-6749 **Attention: Michael MacNaughton and Craig J. Hill** **Email: mmacnaughton@blg.com and chill@blg.com** Lawyers for Ernst & Young Inc.

AND TO:	**Ernst & Young Inc.** 222 Bay Street, P.O. Box 251 Toronto, Ontario M5K 1J7 Tel: (416) 943-2134 Fax: (416) 943-3300 **Attention: Mike Dean** **Email: mike.p.dean@ca.ey.com** Proposed Interim Receiver

APPLICATION

1. THE APPLICANT, BANK OF MONTREAL ("BMO"), MAKES APPLICATION FOR AN ORDER, among other things:

(a) Abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;

(b) Appointing Ernst & Young Inc. ("**E&Y**") as interim receiver (in such capacity, the "**Interim Receiver**"), without security, of all of the current and future assets, undertakings and properties of 2110458 Ontario Limited ("**211**"), 2131413 Ontario Limited ("**213**"), 787755 Ontario Limited ("**787**") and Tarbrac Holdings Inc. ("**Tarbrac**", and, together with 211, 213 and 787, the "**Debtors**");

(c) Granting BMO its costs of this application on a full indemnity basis; and

(d) Such further and other relief as counsel may advise and this Honourable Court may permit.

2. THE GROUNDS FOR THE APPLICATION ARE:

(a) The Debtors are each corporations incorporated pursuant to the laws of the Province of Ontario. The head office of each Debtor is located in Mississauga, Ontario;

(b) Pursuant to a term sheet dated August 25, 2009, separate operating loan agreements with each Borrower dated October 5, 2009 and a discounting facility agreement dated January 19, 2010, all as amended by a further term sheet dated July 12, 2010 and a letter agreement dated August 19, 2010 (collectively, as the same may have been further amended, the "**Credit Facility**

Documents"), BMO made various credit facilities available to 211, 213 and 787 (collectively, the "**Borrowers**");

(c) The Borrowers are, as at November 4, 2010, indebted to BMO for US$17,483,987.40 and CDN$50,142.55, plus accruing interest, legal fees and other costs (the "**Indebtedness**") pursuant to the Credit Facility Documents or guarantees of their respective obligations;

(d) Specifically, pursuant to guarantees, each dated as of October 5, 2009 (collectively, the "**Guarantees**"), Tarbrac guaranteed all of the Indebtedness to BMO and each Borrower guaranteed all of the Indebtedness of each other Borrower to BMO; and

(e) As security for their obligations to BMO under the Credit Facility Documents and the Guarantees, each of the Debtors granted certain security in favour of BMO, including, without limitation, general security agreements, each dated October 5, 2009, made by each of the Debtors in favour of BMO (collectively, including any other security granted in favour of BMO by the Debtors, the "**BMO Security**");

(f) Registrations in respect of the BMO Security were made against each of the Debtors pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA Registrations**");

(g) By virtue of the PPSA Registrations, the BMO Security constitutes a perfected security interest in and to all of the assets of each of the Debtors;

(h) Certain defaults under the Credit Facility Documents have occurred, including, without limitation (collectively, the "**Defaults**"):

(i) the Borrowers have failed to repay the certain credit facilities when due pursuant to the terms of the Credit Facility Documents;

(ii) the Borrowers have failed to remit to BMO, certain funds received from account debtors to which BMO is entitled pursuant to the Credit Facility Documents, and have, instead, directed such monies to pay certain other creditors of the Borrowers;

(iii) the Borrowers have deposited certain funds with another chartered bank (other than BMO), in an effort to avoid BMO setting off any deposits against the Indebtedness; and

(iv) the Borrowers have admitted their insolvency and their inability to meet their obligations as they fall due;

(i) By reason of the Defaults, BMO is entitled to make demand for payment under the Credit Facility Documents and the Guarantees;

(j) On November 5, 2010, BMO made demand for the Indebtedness on the Debtors and certain other individual guarantors of the Borrowers' obligations to BMO, and sent notices to each of the Debtors of its intention to enforce its security under section 244(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended (the "**BIA**");

(k) BMO has real and valid concerns regarding the BMO Security, especially given that the Debtors have previously demonstrated a willingness to subvert funds to which BMO is entitled, in an effort to avoid repayment of the Indebtedness, and their admitted inability to meet their obligations as they fall due;

(l) In the circumstances, it is just and equitable that an Interim Receiver be appointed in order to protect the BMO Security and investigate the actions of the Debtors leading to the Defaults and any other issues that may arise in these proceedings;

(m) E&Y is a licensed trustee in bankruptcy and is familiar with the circumstances set out above;

(n) E&Y has consented to being appointed as the Interim Receiver, without security, of all of the assets, undertakings and properties of the Debtors;

(o) Section 47(1) of the BIA;

(p) Section 101 of the *Courts of Justice Act*, R.S.O 1990 c. C.43, as amended;

(q) Rules 1.04, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

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

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

a) The affidavit of Robert Kiefer, sworn November 10, 2010;

b) The consent of E&Y to act as the Interim Receiver, dated November 10, 2010; and

c) Such other material as counsel may submit and this Honourable Court may permit.

Dated at Toronto, this 10th day of November, 2010

AIRD & BERLIS LLP
Barristers & Solicitors
Brookfield Place, P.O. Box 754
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9
Tel: 416.865.1500
Fax: 416.863.1515

Steven L. Graff – LSUC No. 31871B
Aaron T. Collins – LSUC No. 55490T

Lawyers for Bank of Montreal

BANK OF MONTREAL	- and -	**2110458 ONTARIO LIMITED, 2131413 ONTARIO LIMITED, 787755 ONTARIO LIMITED AND TARBRAC HOLDINGS INC.**
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Proceedings commenced at Toronto

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Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9
Tel: 416.863.1500
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