

Court File No.: CV-20-00647601-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE McEWEN)
MONDAY, THE 14TH
DAY OF JUNE, 2021

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

-and-

ORIENT PUMPS LTD.

Respondent

APPLICATION UNDER Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Orient Pumps Ltd. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and JMD-M Canada Inc. (the "Purchaser") dated as of May 25, 2021 and appended to the Report of the Receiver dated June 2, 2021 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day by video conference.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Debtor, the Purchaser, and Royal Bank of Canada, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Colleen Balint sworn June 4, 2021, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Conway dated October 16, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal

property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Victoria (No. 57) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in cursive script, appearing to read 'McE T.', is positioned above a horizontal line.

Schedule A – Form of Receiver’s Certificate

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (the "Court") dated October 16, 2020, BDO Canada Limited was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Orient Pumps Ltd. (the "Debtor").

B. Pursuant to an Order of the Court dated June 14, 2021, the Court approved the agreement of purchase and sale made as of May 25, 2021 (the "Sale Agreement") between the Receiver and JMD-M Canada Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**BDO Canada Limited, in its capacity as
Receiver of the undertaking, property and
assets of Orient Pumps Ltd., and not in its
personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

A) Real Property

Property municipally known as 605 Highway 7, City of Kawartha Lakes, Ontario, and legally described as:

PT LT 10 CON 9 MARIPOSA PT 2, 57R3732; S/T R199620; CITY OF KAWARTHA LAKES

(PIN 63186-0107 LT)

B) Chattels

All HVAC, coolers, freezers and store shelving unless listed in Schedule 1.1(r) of the Sale Agreement

Schedule C – Claims to be deleted and expunged from title to Real Property

DATE	INSTRUMENT	PARTIES FROM	PARTIES TO
2019/07/05	KL153304 (Charge)	Orient Pumps Ltd.	Royal Bank of Canada
2019/07/05	KL153305 (No Assgn Rent Gen)	Orient Pumps Ltd.	Royal Bank of Canada
2021/02/22	KL173936 (Notice)	Global Fuels Inc.	
2021/05/11	KL176994 (Apl Court Order)	Ontario Superior Court of Justice	BDO Canada Limited

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. The reservations, limitations, provisos, conditions, restrictions and exceptions expressed in the letters patent or grant from the Crown and all statutory exceptions to title;
2. The provisions of governing municipal by-laws;
3. Municipal taxes, liens, charges, including hydro and water charges, rates and assessments accruing from day to day and not yet due and payable;
4. Any minor encroachments which might be revealed by an up to date survey of the Real Property but which do not materially adversely affect the use and marketability of the Real Property;
5. Any right of expropriation conferred upon, reserved to or vesting in Her Majesty the Queen in Right of Canada and Ontario;
6. Any agreements, restrictions or covenants that run with the Real Property and any agreements with the municipal, utilities or public authorities provided that same have been complied with in all material respects and do not materially adversely affect the use and marketability of the Real Property; and
7. Any easements, rights of way or right of re-entry, which do not impair the intended use of the Real Property, by the Purchaser, and provided that same have been complied within all material respects and do not materially adversely affect the use and marketability of the Real Property.
8. The lease between the Company (as landlord) and 8783705 Ontario Inc. (as tenant) dated July 10, 2020.
9. Without limiting the generality of the foregoing, the following instruments:

DATE	INSTRUMENT	PARTIES FROM	PARTIES TO
1967/04/05	VT 87138 (Bylaw)		
1983/06/28	57R3732 (Plan Reference)		
1983/07/11	57R3739 (Plan Reference)		
1985/08/14	R199620 (Transfer Easement)		Bell Canada

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14 June 21

Order to go as per the draft filed and signed. The motion is unopposed. Mr. Singha attended today. In the past he has acted for the Respondent. He was not retained for today and has tried unsuccessfully to reach Mr. Majumder, the Respondent's principle. Both the Applicant and Mr. Singha have provide Mr. Majumder with the motion materials. He has not responded.

He was however served within the timelines set out in the BIA and materials were emailed to him (as per the earlier order re service) on June 4/21.

Mr. Majumder has also been in contact with the Receiver and acknowledged that is aware of today's motion.

The relief sought is fair and reasonable. The Soundair principles have been met. The process was successful.

A sealing order is also reasonable as th Sierra Club criteria has been met.



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SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Lawyers for BDO Canada Limited., in its capacity as Court-appointed Receiver of Orient Pumps Ltd.