

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)

THURSDAY, THE 30TH

JUSTICE SPENCE)

DAY OF JULY, 2015

BETWEEN:

GRACE ADSHADE, BEAVER VALLEY HOLDINGS LIMITED, PREMIERE SELF STORAGE

Applicants

- and -

TDCI BRACEBRIDGE INC., CAROL TARBACK and CLIVE FIGUEIRA

Respondents

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 TDCI Bracebridge Inc ("**TDCI**") for an order (i) approving the sale transaction (the "**Sale Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Sancus Properties Ltd. (the "**Purchaser**") made as of June 30, 2015 and appended to the Second Report of the Receiver dated July 24, 2015, (the "**Second Report**"), and vesting in the Purchaser TDCI's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"); (ii) authorizing the Receiver to engage Global Asset Solutions Inc. (the "**Auctioneer**") an auctioneer in respect of certain Auction Assets (defined below); (iii) approving both the First Report of the Receiver, dated March 13, 2015 (the "**First Report**") and the Second Report of the Receiver, and the activities described therein; (iv) approving the Receiver's interim statement of receipts and disbursements as attached to the Second Report; and (v) approving the fees and disbursements of the Receiver and its counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), for services rendered as particularized in the Second Report and the affidavits of William Courage sworn July 22, 2015, and Jane O. Dietrich sworn July 23, 2015

appended thereto (collectively, the "**Fee Affidavits**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report, including the affidavit of William Courage sworn July 22, 2015 and the affidavit of Jane Dietrich sworn July 23, 2015, appended respectively as Appendices "P" and "Q" to the Second Report (collectively, the "**Fee Affidavits**") and on hearing the submissions of counsel for the Receiver, counsel for the Applicants and Lisa Wertheim-Brault, counsel for Carol Tarback, counsel for Melvyn Eisen, counsel for Fovere Glenbarra Energy Fund I Ltd., and Clive Figueira, appearing in person, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Mary Carreiro sworn July 24, 2015 filed:

1. THIS COURT ORDERS AND DECLARES that the time for service and filing of the notice of motion and the motion record herein shall be and hereby is abridged so that the motion is properly returnable today, and that any further service thereof is hereby dispensed with and that the service of the notice of motion and the motion record as effected by the Receiver is hereby validated in all respects.
2. THIS COURT ORDERS AND DECLARES that the Sale 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 Sale Transaction and for the conveyance of the Purchased Assets to the Purchaser and Aspire Muskoka Inc., Enliven Muskoka Inc., and Cottages Muskoka Inc. (collectively, the "**Designees**").
3. THIS COURT ORDERS AND DECLARES that in furtherance of the completion of the Sale Transaction, the Receiver be and is hereby authorized to hold a charge over the Real Property in the principal amount of \$3,300,000, or as may otherwise be agreed by the Receiver, Melvyn Eisen ("**Eisen**"), the Applicants and Lisa Wertheim-Brault or further order of the Court, in partial satisfaction of the payment of the Purchase Price (as defined in the Sale Agreement) by the Purchaser (the "**Disputed Charge**"). The Disputed Charge shall be subordinate only to a charge (the "**First Eisen Charge**") over the Real Property in the principal amount of \$4,450,000 registered in favour of Eisen as secured creditor. The Disputed Charge shall be on terms and conditions as agreed to by the Receiver, Eisen and Beaver Valley Holdings Limited ("**BVHL**") or as further determined by this Court.

4. THIS COURT ORDERS that the Disputed Charge and all monies received thereunder (the "**Disputed Charge Proceeds**") be held in trust by the Receiver for the benefit of such party or parties that this Court may determine by further Order.
5. THIS COURT ORDERS that the Receiver shall not take steps to enforce the Disputed Charge without agreement of Eisen and Beaver Valley Holdings Limited or further order of this Court.
6. THIS COURT ORDERS AND DECLARES that the Receiver be and is hereby entitled to be paid its reasonable fees and disbursements including those of its legal counsel in administering the Disputed Charge (the "**Receiver's Disputed Charge Costs**") and is hereby granted a first ranking charge over the Disputed Charge and the Disputed Charge Proceeds as security for payment thereof.
7. THIS COURT ORDERS that any party may apply to this Court for advice and directions in respect of the Disputed Charge on not less than 5 days notice to Eisen, BVHL and the Receiver.
8. 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 TDCI's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser and, as appropriate, the Designees, 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 Pattillo dated February 27, 2015; (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.

9. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Registry Division of Muskoka of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver, the Land Registrar is hereby directed to enter the Designees 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.
10. 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.
11. THIS COURT ORDERS that in the event that the condition at subparagraph 5.3(1)(c) of the Sale Agreement is waived by the Receiver and the Purchaser, Premiere Self Storage Inc. and Beaver Valley Holdings Ltd. shall have ten days from closing of the Sale Transaction to apply to this court for advice and directions in respect of the removal of personal property and fixtures owned by them and located on the Real Property.
12. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.
13. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in TDCI's records pertaining to TDCI's past and current employees, including personal information of those employees contemplated in section 3.6 of the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by TDCI.
14. 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 TDCI and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of TDCI;

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 TDCI and shall not be void or voidable by creditors of TDCI, 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.

15. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

16. THIS COURT ORDERS that the Receiver be and is hereby authorized to engage the Auctioneer to conduct an auction of those assets listed in Schedule E hereto (the "**Auction Assets**") substantially in accordance with the terms set out in the letter agreement dated July 23, 2015 and attached to the Second Report (the "**Auction**").

17. THIS COURT ORDERS that the net proceeds from the Auction be received and held by the Receiver in a separate interest-bearing trust account pending further order of this Court.

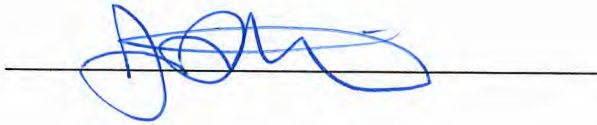
18. THIS COURT ORDERS that confidential appendices A to F to the Second Report be sealed and kept confidential and not form part of the public record, but rather shall be placed separate and apart from the contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon the earlier of the filing of the Receiver's Certificate or further Order of this Court.

19. THIS COURT ORDERS that the activities of the Receiver, as set out in the First Report and Second Report, be and are hereby approved.

20. THIS COURT ORDERS that the statement of receipts and disbursements of the Receiver attached as Appendix "F" to the Second Report be and hereby are approved.

21. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Fee Affidavits, be and are hereby approved.

22. 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.



Giuseppe DiPietro
Registrar

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 04 2015



Schedule A – Form of Receiver’s Certificate

Court File No. CV-14-10678-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GRACE AD SHADE, BEAVER VALLEY HOLDINGS LIMITED, PREMIERE SELF STORAGE

Applicants

- and -

TDCI BRACEBRIDGE INC., CAROL TARBACK and CLIVE FIGUEIRA

Respondents

RECEIVER’S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Pattillo of the Ontario Superior Court of Justice (the “**Court**”) dated February 27, 2015, BDO Canada Limited was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of TDCI Bracebridge Inc. (“**TDCI**”).
- B. Pursuant to an Order of the Court dated July 30, 2015, the Court approved the agreement of purchase and sale made as of June 30, 2015 (the “**Sale Agreement**”) between the Receiver and Sancus Properties Ltd. (“**Purchaser**”) and provided for the vesting in the Purchaser of TDCI’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 or satisfaction by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Sale 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 otherwise satisfied 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 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 Ltd., in its capacity as Receiver
of the undertaking, property and assets of
TDCI Bracebridge Inc., and not in its
personal capacity**

Per: _____

Name:

Title: