

Court File No. CV-15-10891-00CL
Estate Numbers: 31-457902
31-457901

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE Mr.)
JUSTICE Penny)
WEDNESDAY, THE 28TH
DAY OF OCTOBER, 2015

IN THE MATTER OF Section 243(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

BETWEEN:

HSBC BANK CANADA

Applicant

- and -

CANADIAN DAIRY MANUFACTURING INC. and MAPLE DAIRY INC.

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 Canadian Dairy Manufacturing Inc. and Maple Dairy Inc. (the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and R2S Holdings Limited dated August 26, 2015, and appended to the First Report of the Receiver dated October 19, 2015 (the "Report"), and vesting in the designated company, Coronation Holdings Corp., (the "Purchaser") the Debtors' right, title

and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, HSBC Bank Canada, *Eaton & Yun Chen, Lian King & CDM Real Estate*, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Edna Domingues de Araujo sworn October 19, 2015 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 Debtors' 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 Wilton-Siegel dated March 6, 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.

3. THIS COURT ORDERS that the Confidential Appendices 1-7 to the First Report of the Receiver shall be segregated from other documents filed in connection with this motion and shall be sealed until the filing with the Court of the Receiver's Certificate in relation to the sale of the Purchased Assets contemplated by this Order or upon further Order of the Court.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Registry Division of York Region 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.

5. 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.

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


7. 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 Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

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

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

9. 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.



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

 OCT 28 2015

Schedule A – Form of Receiver’s Certificate

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Applicant

- and -

CANADIAN DAIRY MANUFACTURING INC. and MAPLE DAIRY INC.

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Wilton-Siegel of the Ontario Superior Court of Justice (the "Court") dated March 6, 2015, BDO CANADA LIMITED was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Canadian Dairy Manufacturing Inc. and Maple Dairy Inc. (the "Debtors").

B. Pursuant to an Order of the Court dated October 28, 2015, the Court approved the agreement of purchase and sale made as of August 26, 2015 (the "Sale Agreement") between the Receiver and R2S Holdings Limited and provided for the vesting in Coronation Holdings Corp. (the "Purchaser") of the Debtors' 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 sections 17 and 18 of Schedule A to 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 sections 17 and 18 of Schedule A to 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 Canadian Dairy Manufacturing Inc. and Maple Dairy Inc., and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – Purchased Assets

All of the Debtors' right, title and interest in and to the assets listed in the Sale Agreement including, without limitation the following real property:

The property legally described as PT L/T 6 CON D SCARBOROUGH PT 1 64R3405; T/W TB191053; TORONTO, CITY OF TORONTO, being all of PIN 06393-0079 (LT) and municipally known as 633-645 Coronation Drive, Toronto, Ontario

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

1. Instrument No. AT3646188 being a Charge/Mortgage registered July 29, 2014 in favour of HSBC Bank Canada.
2. Instrument No. AT3646208 being a Notice of Assignment of Rents – General registered July 29, 2014 in favour of HSBC Bank Canada.
3. Instrument No. AT2657313 being a Charge/Mortgage registered on August 11, 2014 in favour of Allcity Dairy Inc.

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

(unaffected by the Vesting Order)

1. All of the instruments set out in Schedule "B"
2. Any reservations, restrictions, rights of way, easements or covenants that run with the Real Property.
3. Any registered agreements with a municipality of a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service.
4. All laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Real Property.
5. Any minor easements for the supply of utility service to the Real Property or adjacent properties.
6. Encroachments disclosed by any errors or omissions in existing surveys of the Real Property or neighbouring properties and any title defect, encroachment or breach of a zoning or property by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Real Property and survey matters generally.
7. The exceptions and qualifications set forth in the *Land Titles Act*.

HSBC BANK CANADA
Applicant

-and-

CANADIAN DAIRY MANUFACTURING INC. et al
Respondents

COURT FILE No.: CV-15-10891-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

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