

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C.1985, C.B-3 AS AMENDED;

IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C-
43, AS AMENDED

THE HONOURABLE MR.) FRIDAY, THE 14TH
)
JUSTICE CAVANAGH) DAY OF MAY, 2021
)

B E T W E E N:

THE BANK OF NOVA SCOTIA

Applicant

- and -

1854313 ONTARIO LIMITED

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as the Court-appointed receiver (the "**Receiver**") of certain property, assets and undertakings of 1854313 Ontario Limited (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 Glengate Investments Inc. (the "**Purchaser**") dated March 31, 2021 and appended to the Confidential Supplementary Report dated April 30, 2021 as Appendix "A", collectively with the Receiver's Second Report and the Confidential Supplementary Report dated April 30, 2021 (the "**Second 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 judicial teleconference via Zoom at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Tayler Reiners sworn May 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 Mr. Justice Cavanagh dated October 29, 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" hereto) 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 appropriate Land Titles Division 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.

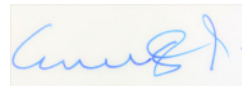
6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. 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 the Debtor.

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 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 settlement, 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 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.



Digitally signed by
Mr. Justice Cavanagh

Justice, Ontario Superior Court of Justice
(Commercial List)

Schedule A – Form of Receiver’s Certificate

Court File No. CV-20-00650239-00CL

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 29, 2020, BDO Canada Limited ("**BDO**") was appointed as the receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of 1854313 Ontario Limited (the "**Debtor**").

B. Pursuant to an Order of the Court dated May 14, 2021, the Court approved the agreement of purchase and sale made as of March 31, 2021 (the "**Sale Agreement**") between the Receiver and Glengate Investments 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 the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction contemplated by the Sale Agreement 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 the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The transaction contemplated by the Sale Agreement 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 the
Court-appointed Receiver of certain
property, assets and undertakings of
1854313 Ontario Limited , and not in its
personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

All real property, legally described as:

LOTS 1 TO 20, PLAN 16, MARKET BLOCK, PLAN OLD SURVEY (FORMERLY EAST MARKET SQUARE AND WEST MARKET SQUARE) LOTS 85 TO 89, PART OF LOTS 78, 81 & 84, PART OF SIXTH ST. PLAN OLD SURVEY AND PART OF LANE, PLAN 16 CLOSED BY 375265 & 227898, AS IN 370184 AND DESIGNATED AS PARTS 1 TO 30, 32 TO 35, 37 TO 52, 24R2372 EXCEPT PART 1, 24R3074, S/T 388756; DOWNTOWN CHATHAM CENTRE; SUBJECT TO AN EASEMENT IN GROSS OVER PART OF LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19 & LANE, PLAN 16 AND PART OF LOTS 81, 84, 86 & MARKET BLOCK, OLD SURVEY, DESIGNATED AS PARTS 4, 5, 6, 7 & 9, 24R8587 AS IN CK89601; SUBJECT TO AN EASEMENT IN GROSS OVER PART OF LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19 & LANE, PLAN 16 AND PART OF LOTS 81, 84 & MARKET BLOCK, OLD SURVEY, DESIGNATED AS PARTS 2, 5 & 9, 24R8587 AS IN CK89603; MUNICIPALITY OF CHATHAM-KENT (PIN 00504-0289 LT)

All fixtures, and personal property of 1854313 Ontario Limited (operating as Downtown Chatham Centre) including any and all tenant lease agreements, save and except:

1. the lease expressly noted as to be terminated by the Receiver as a condition of closing;
2. the lease registered as instrument number CK103702 to Solar Power Network 002 Inc. and the Application Name Change registered as instrument number CK146294 to 2332852 Ontario Inc, as may have been amended from time to time, with respect to the solar panels on the roof of the Real Property.

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

390380 (April 26, 1983) - Notice of Lease
390381 (April 26, 1983) – Agreement – Landlord Consent
391313 (May 25, 1983) - Notice of Sub-Lease
391375 (May 27, 1983) - Agreement - Non-Disturbance
394527 (August 25, 1983) - Agreement - Non-Disturbance
412000 (January 8, 1985) - Agreement - Non-Disturbance
412001 (January 8, 1985) - Agreement – Non-Disturbance
412002 (January 8, 1985) - Agreement re: Co-Tenancy
412005 (January 8, 1985) - Agreement - Non-Disturbance
412006 (January 8, 1985) - Agreement - Non-Disturbance
443022 (April 6, 1987) - Notice of Lease
443023 (April 6, 1987) - Notice of Lease
611823 (November 28, 2001) - Notice of Lease
CK33113 (January 27, 2009) – Application to Change Name - Instrument
CK89603 (November 1, 2013) - Transfer
CK166291 (November 18, 2019) - Charge
CK166292 (November 18, 2019) - Notice of Assignment of Rents – General
CK166679 (November 27, 2019) - Charge
CK166680 (November 27, 2019) - Notice of Assignment of Rents - General
CK166711 (November 28, 2019) - Discharge of Charge
CK174479 (June 19, 2020) – Notice of Security Interest
CK176066 (August 6, 2020) - Construction Lien
CK179480 (October 27, 2020) - Certificate of Action
CK179918 (November 3, 2020) - Application to Register Court Order

Writ 19-0000275 vs. 1854313 Ontario Limited and Downtown Chatham Centre
Writ 20-0000149 vs. 1854313 Ontario Limited

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

(unaffected by the Vesting Order)

SPECIFIC PERMITTED ENCUMBRANCES

1. 227898 (June 18, 1971) - Bylaw
2. 24R-1839 (December 7, 1977) - Reference Plan
3. 24R-1840 (December 7, 1977) - Reference Plan
4. 24R-2372 (September 27, 1979) - Reference Plan
5. 375265 (September 30, 1981) - Bylaw
6. 24R-3081 (November 5, 1982) - Reference Plan
7. 388756 (March 4, 1983) - Agreement for Right of Way
8. 392147 (June 17, 1983) - Agreement with Union Gas Limited
9. 24R-8587 (December 24, 2008) - Reference Plan
10. CK89601 (November 1, 2013) – Easement
11. CK89603 (November 1, 2013) — Easement
12. CK89606 (November 1, 2013) - Agreement – Municipal
13. CK103702 (February 9, 2015) — Notice of Lease
14. CK146294 (June 26, 2018) — Application to Change Name — Instrument
15. 24R-10591 (July 30, 2019) – Reference Plan

GENERAL PERMITTED ENCUMBRANCES

1. Any municipal by-laws or regulations affecting the Real Property or its use and any other municipal land use instruments including without limitation, official plans and zoning and building by-laws, as well as decisions of the committee of adjustment or any other competent authority permitting variances therefrom, and all applicable building codes;
2. Registered agreements with any municipal, provincial or federal governments or6 authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant authority or regulated utility;
3. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Purchased Assets;

4. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Real Property;
5. Such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Real Property or any part thereof, or materially impair the value thereof;
6. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute; and
7. The following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.

THE BANK OF NOVA SCOTIA
Applicant

v.

1854313 ONTARIO LIMITED
Respondent

Court File No. CV-20-00650239-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

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Barristers & Solicitors
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Solicitors for the Receiver,
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