

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**



THE HONOURABLE MR.

JUSTICE FARLEY

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TUESDAY, THE 31ST

) DAY OF MAY, 2005

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF FINCORE INDUSTRIES INC. AND
999361 ONTARIO INC.**

ORDER

THIS MOTION made by BDO Dunwoody Limited ("BDO"), in its capacity as interim receiver (the "Interim Receiver") of the property and assets and undertaking of Fincore Industries Inc. ("Fincore") and 999361 Ontario Inc. ("999361") (collectively, the "Debtors") for an Order vesting certain assets in 1542490 Ontario Inc. (the "Purchaser") upon the filing of a certificate (the "Certificate") substantially in the form attached hereto as Schedule "A" was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the report of the Interim Receiver dated May 24, 2005 and the Exhibits thereto (the "Report") including Exhibit D being the agreement of purchase and sale dated May 24, 2005 (the "Agreement") and the consent of BDO to act as trustee in bankruptcy of the estates of Fincore and 999361 (the "Trustee in Bankruptcy") and on hearing the submissions of counsel for BDO, the Debtors, the Purchaser and no other parties appearing although duly served as evidenced by the affidavit of service of Anna-Marie Jones sworn May 26, 2005.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged to the date of actual service, and that the

service, including the manner of service of the motion materials, be and is hereby approved and validated, that the motion is properly returnable today, and that all parties entitled to notice of this motion have been properly served and further service thereof is hereby dispensed with.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order, have the same meaning as ascribed thereto in the Agreement.

VESTING OF ASSETS

3. **THIS COURT ORDERS** that upon all the conditions to the purchase of the Purchased Assets (as defined in the Order approving the Agreement made in these proceedings dated May 31, 2005) having been satisfied or waived and the filing by the Trustee in Bankruptcy of a Certificate with this Court, the Purchased Assets shall be vested absolutely in the Purchaser, free and clear of and from any and all right, title, claims, benefits, interests, hypothecs, priorities, security interests (whether contractual, statutory or otherwise) charges (including court ordered charges), mortgages, estates, trusts or deemed trusts (whether contractual, statutory or otherwise), liens (whether contractual, statutory or otherwise), assignments, executions, judgments, options, adverse claims, levies, agreements, taxes, rights of distress, set-off (whether legal, equitable or contractual), liabilities (direct, indirect, absolute or contingent) or other claims (including claims provable in bankruptcy) encumbrances, whether or not they have been attached or been perfected, registered or filed and whether secured, unsecured or otherwise, or any other rights, rights of use, disputes and debts, by or of all persons or entities of any kind (the "Encumbrances") including, without limiting the generality of the foregoing: (i) any Encumbrances or charges created by Order of this Court in these proceedings, and (ii) all Encumbrances, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets be and are hereby expunged and discharged as against the Purchased Assets, effective as of the time of the filing of the Certificate with this Court.

4. **THIS COURT ORDERS** that the proceeds (the "Proceeds") of sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets and shall be held by the Trustee

in Bankruptcy until further Order of this Court, without prejudice to any claim being advanced against the Proceeds as could have been advanced against the Purchased Assets and all Encumbrances, including all deemed trusts and any other Crown claims, shall attach to the Proceeds to the same extent with the same priority as they had with respect to the Purchased Assets.



JOSEPH P. VAN TASSEL
REGISTRAR

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

MAY 31 2005

PER/PAR: 

SCHEDULE "A"

FORM OF CERTIFICATE – PURCHASED ASSETS

Court File No. 04-CL-5552

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF FINCORE INDUSTRIES INC. AND
999361 ONTARIO INC.**

CERTIFICATE – PURCHASED ASSETS

RECITALS

A. Pursuant to Orders made May 31, 2005 (the "Approval and Vesting Orders") of the Ontario Superior Court of Justice – Commercial List (the "Court"), the Court approved the agreement of purchase and sale dated as of May 24, 2005 (the "Agreement") between, *inter alia*, the trustee in bankruptcy (the "Trustee") for the estates of Fincore Industries Inc. and 999361 Ontario Inc., and 1542490 Ontario Inc. (the "Purchaser").

B. The Agreement provides for the vesting of the [Moveable/Infrastructure] Assets (as defined in the Agreement) in the Purchaser which vesting is to be effective with respect to the [Moveable/Infrastructure] Assets upon the filing of a certificate by the Trustee confirming that all of the conditions to the purchase of the [Moveable/Infrastructure] Assets contained in the Agreement have been satisfied or waived in accordance with the Agreement.

THE TRUSTEE HEREBY CERTIFIES that all of the conditions to the purchase of the [Moveable/Infrastructure] Assets contained in the Agreement have been fulfilled, satisfied or waived in accordance with the Agreement.

DATED at Toronto, Ontario this _____ day of May, 2005.

BDO DUNWOODY LIMITED, in its capacity as Trustee in Bankruptcy of the estates of Fincore Industries Inc. and 999361 Ontario Inc., and not in its personal capacity

by _____

Name: Uwe Manski

Title: President

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF FINCORE INDUSTRIES INC. AND 999361 ONTARIO INC.**

Court File No. 04-CL-5552

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

ORDER

FRASER MILNER CASGRAIN LLP

Barristers and Solicitors

P.O. Box 100

1 First Canadian Place

Toronto, Ontario

M5X 1B2

DANIEL R. DOWDALL

LSUC No. 16737D

Telephone: (416) 863-4700

JOHN D. RUSSO

LSUC No. 42939V

Telephone: (416) 863-4648

Facsimile: (416) 863-4592

Solicitors for BDO Dunwoody Limited,
in its capacity as Monitor and Interim
Receiver of Fincore Industries. Inc. and
999361 Ontario Inc.