

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE *MR.*) FRIDAY, THE 6th
JUSTICE *CAMERON*) DAY OF FEBRUARY, 2009

BETWEEN:



BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

YORK FISH COMPANY INC., FORMERLY 2102454 ONTARIO INC.,
2110109 ONTARIO INC., 2142863 ONTARIO INC.,
MORAD SHAIKH-OL-ISLAMI aka MORAD SHAIN

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Dunwoody Limited in its capacity as the Court-appointed interim receiver and receiver and manager (the "Receiver") of the undertaking, property and assets of York Fish Company Inc., formerly 2102454 Ontario Inc., 2110109 Ontario Inc., and 2142863 Ontario 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 Export Packers Company Limited in trust for a company to be incorporated, made as of January 14, 2009 and appended to the Sealed Portion of the Second Report of the Receiver dated January 29, 2009 (the "Report"), and vesting in 2197008 Ontario Inc., or as directed and authorized in writing by 2197008 Ontario Inc., (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 at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Receiver, including the Sealed Portion of the Second Report, and on hearing the submissions of counsel for the Receiver, submissions of counsel for the Applicant, Business Development Bank of Canada, submissions of counsel for the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavits of Kathy Barbuto sworn February 2 and 5, 2009 and the Affidavit of Service of Liana Turrin sworn February 5, 2009, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtor and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and 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 Orders of the Honourable Justice Campbell dated September 10, 2008 and October 15, 2008; (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 Land Titles Division of Peel (No. 43) of an Application for Vesting Order in the form prescribed by the *Land Titles 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 settlement, fraudulent preference, assignment, fraudulent conveyance 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 ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

8. THIS COURT ORDERS that the Sealed Portion of the Second Report, including the appendices attached thereto, of the Receiver dated January 29, 2009 shall be treated as confidential and shall be segregated from other documents filed in connection with this motion and shall be provided to the Court in a sealed envelope marked with the following label:

Pursuant to an order dated February 6, 2009, this envelope shall remain sealed in the court file and shall not be opened until 10 days after the filing with Court of the Receiver's Certificate or upon further order of the Court.

and the sealed envelope shall not be opened until ten (10) days after the filing with Court of the Receiver's Certificate or upon further Order of the Court.

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.:

FEB 06 2009

PER / PAR: TV

Schedule A – Form of Receiver’s Certificate

Court File No.CV-08-7708-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

and

YORK FISH COMPANY INC. formerly 2102454 ONTARIO INC.,
2110109 ONTARIO INC., 2142863 ONTARIO LTD.,
MORAD SHAIKH-OL-ISLAMI a.k.a. MORAD SHAIN

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to the Orders of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (the "Court") dated September 10, 2008 and October 15, 2008, BDO Dunwoody Limited was appointed as the interim receiver and receiver and manager (the "Receiver") of the undertaking, property and assets of York Fish Company Inc., Formerly 2102454 Ontario Inc., 2110109 Ontario Inc., and 2142863 Ontario Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated February 6, 2009, the Court approved the agreement of purchase and sale made as of January 14, 2009 (the "Sale Agreement") between the Receiver and Export Packers Company Limited in trust for a company to be incorporated and provided for the vesting in 2197008 Ontario Inc., or as may be directed and authorized in writing by 2197008 Ontario Inc. (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 5 of the Sale Agreement have been satisfied or waived by the Receiver and the

Purchaser; and (iii) the transaction contemplated by the Sale Agreement (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 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser.
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on February ■, 2009.

**BDO DUNWOODY LIMITED, in its capacity
as Interim Receiver and Receiver and
Manager of the undertaking, property and
assets of York Fish Company Inc., formerly
2102454 Ontario Inc., 2110109 Ontario Inc.,
and 2142863 Ontario Inc.**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

1. The lands legally described as follows (the “Real Property”):

FIRSTLY:

Parcel Block 6-5, Section 43M-618;
Part of Block 6, Plan 43M-618;
Designated as Part 1 on Plan 43R-13959; Brampton

PIN NO.: 14209-0121 (LT)

SECONDLY:

Parcel Block 6-6, Section 43M-618;
Part of Block 6, Plan 43M-618;
Designated as Part 2 on Plan 43R-13959; Brampton

PIN NO.: 14209-0122 (LT)

2. All of the Receiver’s right title and interest, if any, in the Equipment (as such term is defined in the Sale Agreement).

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

1. Charge/Mortgage of Land in favour of Business Development Bank of Canada registered as Instrument No. PR1342093 on September 25, 2007.
2. Notice of Assignment of Rents in favour of Business Development Bank of Canada registered as Instrument No. PR1342137 on September 25, 2007.

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

(unaffected by the Vesting Order)

1. The reservations, limitations, provisions and conditions expressed in the original grant from the Crown as they may be varied by statute and statutory exceptions to title.
2. Liens for taxes, local improvements, assessments or governmental charges or levies not at the time due or delinquent.
3. Municipal and regulatory requirements, and zoning, and building by laws, codes, ordinances, municipal by laws, regulations and development agreements.
4. The liabilities, rights, interests, reservations, limitations, conditions and exceptions to title set out in section 44(1) of the Land Titles Act (Ontario), and amendments thereto, if applicable.
5. Undetermined or inchoate construction liens which are incidental to current operations and statutory encumbrances of any nature whatsoever claimed or held by any governmental authority and, in each case, that have not at the time been filed or registered against the title to the Lender or served upon the Receiver pursuant to law or that relate to obligations not due nor delinquent provided that such rights do not, in the Purchaser's opinion on or before Closing, acting reasonably, reduce the value..
6. Application to Register Notice of An Agreement registered as Instrument No. LT382802 on June 30, 1982.
7. Part Lot Control Exemption By-law registered as Instrument No. LT613723 on January 15, 1986.
8. Plan Reference registered as Instrument No. 43R13959 on October 23, 1986.
9. Notice of Agreement (Section 74) registered as Instrument No. LT701380 on November 25, 1986.
10. Notice of Site Plan Agreement registered as Instrument No. PR362104 on December 11, 2002.
11. Application to Register Bylaw registered as Instrument No. PR815402 on March 9, 2005.

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

-and-

YORK FISH COMPANY INC. et al

Respondents

Court File No. CV-08-7708-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Lawyers for BDO Dunwoody Limited,
Court Appointed Receiver

RCP-E 4C (July 1, 2007)