

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE REGIONAL SENIOR)
JUSTICE THOMAS)

TUES DAY, THE *18th* DAY

OF JUNE, 2019

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

**BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE and ROYAL TIMBERS INC.**

Respondents

APPLICATION UNDER SECTION 207 OF THE BUSINESS CORPORATIONS
ACT, R.S.O. 1990, C. B. 16, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. ("**Royal Timbers**") pursuant to the Order of The Honourable Mr. Justice Thomas dated June 5, 2013, as amended, for, *inter alia*, an order approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale dated effective January 3, 2019 (the "**APS**") between the Receiver, as vendor, and 2248144 Ontario Limited (the "**Purchaser**"), as purchaser, and appended as **Appendix "E"** to the Twelfth Report of the Receiver dated June 5, 2019 (the "**Twelfth Report**"), and directing the Receiver to complete the transaction contemplated thereby in respect of the real property described on **Schedule "A"** (the "**Real Property**") and vesting in the Purchaser all of Royal

Timbers' right, title and interest in and to the Real Property, was heard in writing this day at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

ON READING the Twelfth Report and the Confidential Supplement, the motion being unopposed, and on noting that no one appeared, although properly served as appears from the affidavit of Catherine O'Neill sworn June 14, 2019, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the APS 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 Real Property 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 "B"** hereto (the "**Receiver's Certificate**"), all of Royal Timbers' right, title and interest in and to the Real Property 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 Thomas dated June 5, 2013; and (ii) 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 Real Property are hereby expunged and discharged as against the Real Property.
3. THIS COURT ORDERS that upon registration in the Land Registry Office for the Land Titles Division of Essex (LRO #12) 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 Real Property described in **Schedule "A"** hereto in fee simple, and is hereby directed to delete and

expunge from title to the Real Property described in **Schedule "A"** hereto 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 Real Property shall stand in the place and stead of the Real Property, 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 Real Property with the same priority as they had with respect to the Real Property immediately prior to the sale, as if the Real Property 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 Royal Timbers and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of Royal Timbers;

the vesting of the Real Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Royal Timbers and shall not be void or voidable by creditors of Royal Timbers, 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.

7. 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 WINDSOR	
In Book No.	30
re Document No.	771
JUN 28 2019	20
by	EB


Justice, Ontario Superior Court of
Justice

THE HONOURABLE
REGIONAL SENIOR
JUSTICE B. G. THOMAS

Schedule A – Real Property

The lands and premises legally described as:

Part of lots 143 & 144 Concession 1, designated as Part 24 on Plan 12R-27789, being part of PIN 01566-0979 (LT); LRO #12

Schedule B

Court File No. CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KEVIN D'AMORE

Applicant

- and -

**BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE and ROYAL TIMBERS INC.**

Respondents

APPLICATION UNDER SECTION 207 OF THE *BUSINESS CORPORATIONS
ACT*, R.S.O. 1990, C. B. 16, AS AMENDED

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Thomas of the Ontario Superior Court of Justice (the "**Court**") dated June 5, 2013, as amended, BDO Canada Limited ("**BDO**") was appointed as the receiver (the "**Receiver**") of the assets, undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. ("**Royal Timbers**").

B. Pursuant to an Order of the Court dated June __, 2019, the Court approved an Agreement of Purchase and Sale dated effective January 3, 2019 (the "**APS**") between the Receiver, as vendor, and 2248144 Ontario Limited, as purchaser (the "**Purchaser**"), and appended as **Appendix "E"** to the Twelfth Report dated June 5, 2019 in respect of the real property legally described on Schedule B1 hereto (the "**Real Property**") and vesting in the Purchaser all of Royal Timbers' right, title and interest in and to the Real Property, which vesting is to be effective with respect to the Real Property 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 Real Property; (ii) that the conditions to closing as set out in the APS 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 APS.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Real Property payable on closing pursuant to the APS;
2. The conditions to closing as set out in the APS 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 solely in its capacity as Court-appointed receiver of Banwell Development Corporation and Royal Timbers Inc. and not in its personal capacity

Per: _____

Name: Stephen N. Cherniak
Title: Senior Vice President

Schedule B1 – Real Property

The lands and premises legally described as:

Part of lots 143 & 144 Concession 1, designated as Part 24 on Plan 12R-27789, being part of PIN 01566-0979 (LT); LRO #12

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

Registration Number	Date	Instrument	Amount	Parties From	Parties to
CE163177	2005/08/10	Charge	\$8,000,000	Banwell Development Corporation	Bank of Montreal
CE269243	2007/04/24	Charge	\$252,693	Royal Timbers Inc.	Simba Group Developments Limited and D'Amore, Patrick
CE269244	2007/04/24	Charge	\$103,706	Royal Timbers Inc.	Simba Group Developments Limited and D'Amore, Patrick
CE269246	2007/04/24	Charge	\$289,209	Royal Timbers Inc.	Simba Group Developments Limited and D'Amore, Patrick
CE269247	2007/04/24	Charge	\$96,403	Royal Timbers Inc.	Simba Group Developments Limited and D'Amore, Patrick
CE269248	2007/04/24	Charge	\$83,257	Royal Timbers Inc.	Simba Group Developments Limited and D'Amore, Patrick
CE269250	2007/04/24	Charge	\$194,267	Royal Timbers Inc.	Simba Group Developments Limited and D'Amore, Patrick
CE269253	2007/04/24	Charge	\$201,570	Royal Timbers Inc.	Simba Group Developments Limited and D'Amore, Patrick
CE286717	2007/08/08	Construction	\$385,450	J. Lepera Contracting	

		Lien		Inc.	-
CE292456	2007/09/12	Certificate	-	Superior Court of Justice	J. Lepera Contracting Inc.
CE297633	2007/10/12	Construction Lien	\$42,828	J. Lepera Contracting Inc.	
CE297634	2007/10/12	Construction Lien	\$44,778	J. Lepera Contracting Inc.	
CE304400	2007/11/23	Certificate	-	Superior Court of Justice	J. Lepera Contracting Inc.
CE304401	2007/11/23	Certificate	-	Superior Court of Justice	J. Lepera Contracting Inc.
CE569187	2013/06/18	APL Court Order		Superior Court of Justice	BDO Canada
CE714324	2016/05/25	Transmisson Charge		D'Amore, Patrick	D'Amore, Scott
CE714326	2016/05/25	Transmisson Charge		D'Amore, Patrick	D'Amore, Scott
CE714327	2016/05/25	Transmisson Charge		D'Amore, Patrick	D'Amore, Scott
CE714329	2016/05/25	Transmisson Charge		D'Amore, Patrick	D'Amore, Scott
CE714330	2016/05/25	Transmisson Charge		D'Amore, Patrick	D'Amore, Scott
CE714331	2016/05/25	Transmisson Charge		D'Amore, Patrick	D'Amore, Scott
CE714332	2016/05/25	Transmisson Charge		D'Amore, Patrick	D'Amore, Scott
CE715026	2016/05/30	Transfer of Charge		Simba Group Developments Limited D'amore, Scott	Windsor Family Credit Union Limited

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

- a) The reservations, limitations, provisions and conditions expressed in the original Agreement from the Crown and all statutory exceptions to title;
- b) Any registered restrictions or covenants that run with the Real Property provided the same have been complied with in all material respects;
- c) Any easements, rights of way, or right of re-entry in favour of a developer, not materially or adversely impairing the present use of the Real Property;
- d) Any agreements with municipal, utilities or public authorities provided the same have been complied with in all material respects; and
- e) Any minor encroachments which might be revealed by an up to date survey of the Real Property; and
- f) The following instruments:

Registration Number	Date	Instrument	Amount	Parties From	Parties to
D37712178	1991/12/18	APL (General)		See Document	E & E Builders Limited Di Mambro & Mancini Construction Ltd.
LT336126	2002/02/05	Bylaw		The Corporation of the City of Windsor	
CE144181	2005/05/04	Transfer Easement	\$3,760	D'Amore, Pat	The Corporation of the City of Windsor The Windsor Utilities Commission-Water Division Enwin Powerlines Limited Union Gas Limited

						Bell Canada Cogeco Cable Systems Inc.
CE185377	2005/11/29	APL Absolute Title			Banwell Development Corporation	
CE191966	2006/01/04	No Sub Agreement			The Corporation of the City of Windsor	Banwell Development Corporation
12R22842	2006/11/21	Plan Reference				
12R22922	2007/02/07	Plan Reference				
CE267537	2007/04/12	Transfer Easement	\$1		Royal Timbers Inc.	Royal Timbers Inc.
CE269223	2007/04/24	Transfer	\$1		Royal Timbers Inc.	Royal Timbers Inc.
CE269224	2007/04/24	Transfer	\$1		Royal Timbers Inc.	Royal Timbers Inc.
CE269225	2007/04/24	Transfer	\$1		Royal Timbers Inc.	Royal Timbers Inc.
CE269226	2007/04/24	Transfer	\$1		Royal Timbers Inc.	Royal Timbers Inc.
CE269227	2007/04/24	Transfer	\$1		Royal Timbers Inc.	Royal Timbers Inc.
CE269228	2007/04/24	Transfer	\$1		Royal Timbers Inc.	Royal Timbers Inc.
CE269392	2007/04/25	Transfer Easement	\$1		Royal Timbers Inc.	Bell Canada.
CE277655	2007/06/15	APL Consolidate			Royal Timbers Inc.	
CE287636		Transfer	\$1		Royal Timbers Inc.	Royal Timbers Inc.
CE447653	2010/11/02	Notice			Royal Timbers Inc.	
CE447656	2010/11/02	Notice			Royal Timbers	

CE449307	2010/11/17	LR's Order		Inc. Land Registrar	
CE828900	2018/05/14	APL Consolidate		Royal Timbers Inc.	
CE882405	2019/04/23	Transfer Rel&Aband		Royal Timbers Inc.	Royal Timbers Inc.
CE883362	2019/04/29	Transfer Rel&Aband		Royal Timbers Inc.	Royal Timbers Inc.
12R27789	2019/05/14	Plan Reference			

KEVIN D'AMORE
Applicant

and

BANWELL DEVELOPMENT CORPORATION, 928579
ONTARIO LIMITED, SCOTT D'AMORE and ROYAL
TIMBERS INC.
Respondents

Court File No: CV-11-17088

**ONTARIO
SUPERIOR COURT OF JUSTICE**
Proceeding commenced at WINDSOR

APPROVAL AND VESTING ORDER

MILLER THOMSON LLP

One London Place
255 Queens Avenue, Suite 2010
London, ON Canada N6A 5R8

Tony Van Klink LSUC#: 29008M
Tel: 519.931.3509
Fax: 519.858.8511

Sherry A. Kettle LSUC#: 53561B
Tel: 519.931.3534
Fax: 519.858.8511

Lawyers for BDO Canada Limited,
Receiver of Banwell Development
Corporation and Royal Timbers Inc.