

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE *R. ABRAMS*

) THURSDAY, THE 7TH
)
) DAY OF DECEMBER, 2017

B E T W E E N:

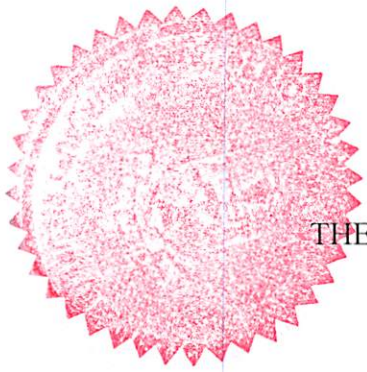
PETER VOGELZANG

Applicant

and

THE ESTATE OF JAMES BARNETT, BY ITS EXECUTOR, MELISSA FISHER and 2139911 ONTARIO LIMITED

Respondents



APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as the court-appointed liquidator and receiver (the “**Liquidator/Receiver**”) of the estate and effects of 2139911 Ontario Limited (the “**Company in Liquidation**”) for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Liquidator/Receiver (in such capacity), as seller, and 1710070 Ontario Limited (the “**Purchaser**”), as buyer, dated September 1, 2017, as amended from time to time (collectively, the “**Sale Agreement**”), and appended to the Confidential Supplement to the First Report of BDO Canada Limited, in its capacity as Court Appointed Liquidator and Receiver of 2139911 Ontario Limited, dated November 7, 2017 (the “**Confidential Supplement**”), and vesting in the Purchaser the Company in Liquidation’s right, title and interest in and to the property and assets

described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 5 Court Street, Kingston, Ontario, K7L 2N4.

ON READING the First Report of BDO Canada Limited, in its capacity as Court Appointed Liquidator and Receiver of 2139911 Ontario Limited, dated November 7, 2017 (the “**First Report**”), the Confidential Supplement, the Notice of Motion of the Liquidator/Receiver and the Factum of the Liquidator/Receiver, filed, and on hearing the submissions of counsel for the parties:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Liquidator/Receiver in its capacity as court-appointed liquidator and receiver of the Company in Liquidation is hereby authorized and approved, with such minor amendments as the Liquidator/Receiver may deem necessary. The Liquidator/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 Liquidator/Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule “A”** hereto (the “**Liquidator/Receiver’s Certificate**”), all of the Company in Liquidation’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 Judgment of the Honourable Justice Helen Macleod-Beliveau, signed June 9, 2016; (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 upon the registration in the Land Registry Office for the Land Titles Division of Hastings (No. 21) 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 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 Liquidator/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.

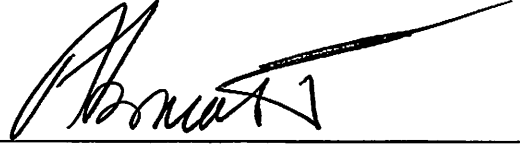
5. THIS COURT ORDERS AND DIRECTS the Liquidator/Receiver to file with the Registrar of this Court a copy of the Liquidator/Receiver's Certificate, forthwith after delivery thereof.
6. THIS COURT ORDERS that the Liquidator/Receiver may pay from the proceeds of sale all transaction or other costs including commissions payable and outstanding municipal and other taxes;
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 Company in Liquidation and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the Company in Liquidation;

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 Company in Liquidation and shall not be void or voidable by creditors of the Company in Liquidation,

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 THAT the Confidential Supplement to the First Report and its Confidential Appendices filed herein and the exhibits therein, including the Sale Agreement, referred to in the First Report of the Receiver, shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and that the sealed envelope shall not be opened until no earlier than 30 days after successful closing as evidenced by the filing of the Liquidator/Receiver's Certificate as referred to above or further order of this Honourable Court;
9. THIS COURT ORDERS that the activities of the Liquidator/Receiver to date, as set out in the First Report, are hereby approved.
10. 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 Liquidator/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 Liquidator/Receiver, as an officer of this Court, as may be necessary or desirable to give

effect to this Order or to assist the Liquidator/Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to be 'P. Bonatti', is written above a horizontal line.

ENTERED AT KINGSTON
UNSCRIT A KINGSTON

DEC 07 2017

IN BOOK NO. 73-21
AU REGISTRE NO.73-21

Schedule "A" - Form of Liquidator/Receiver's Certificate

Court File No. CV-15-355-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

PETER VOGELZANG

Applicant

and

THE ESTATE OF JAMES BARNETT, BY ITS EXECUTOR, MELISSA
FISHER and 2139911 ONTARIO LIMITED

Respondents

LIQUIDATOR/RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to the Order of the Honourable Justice Helen Macleod-Beliveau of the Ontario Superior Court of Justice (the "**Court**") signed June 9, 2016, BDO Canada Limited was appointed as the liquidator and receiver (the "**Liquidator/Receiver**") of the estate and effects of 2139911 Ontario Limited (the "**Company in Liquidation**").

B. Pursuant to an Order of the Court dated December 7, 2017, the Court approved the agreement of purchase and sale made as of September 1, 2017, as amended from time to time (collectively, the "**Sale Agreement**") between the Liquidator/Receiver, in its capacity as court-appointed liquidator and receiver of the Company in Liquidation, and 1710070 Ontario Limited (the "**Purchaser**") and provided, *inter alia*, for the vesting in the Purchaser of the Company in Liquidation's right, title and interest in and to the property described in and subject to the Sale Agreement (the "**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Liquidator/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 2 and 6 of Schedule B of the Sale Agreement have been satisfied or waived by the Liquidator/Receiver and the Purchaser, as applicable; and (iii) the transaction of purchase and sale contemplated by the Sale Agreement (the “**Transaction**”) has been completed to the satisfaction of the Liquidator/Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE LIQUIDATOR/RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Liquidator/Receiver has received the Purchase Price for the Purchased Assets payable on the Completion Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 2 and 6 of Schedule B of the Sale Agreement have been satisfied or waived by the Liquidator/Receiver and the Purchaser, as applicable; and
3. The Transaction has been completed to the satisfaction of the Liquidator/Receiver.
4. This Certificate was delivered by the Liquidator/Receiver at _____ on the ____ day of _____, 2017.

BDO Canada Limited, in its capacity as Liquidator and Receiver of the estate and effects of 2139911 Ontario Limited, and not in its personal capacity

Per:

Name: Gary Cerrato
Title: Vice President

Schedule "B" - Purchased Assets

All of the right, title and interest, if any, of 2139911 Ontario Limited in and to the "property" as defined in Schedule A of the Sale Agreement, being the lands and premises legally described and municipally known as follows:

PIN 40397-0154 (LT)	
Thumbnail Description	MERCIA ST PL 240 MURRAY (AKA HOWCUTT ST & AKA DIXON DR) (CLOSED BY BY-LAW QR640809) PT 2 PLAN 1749; S/T EASEMENT IN GROSS PT 2 21R22094 AS IN HT34354; QUINTE WEST; COUNTY OF HASTINGS
PIN 40397-0162 (LT)	
Thumbnail Description	PT OF HASTINGS ST PL 255 MURRAY (CLOSED BY QR260906) AKA DIXON DR, PT 4 21R22860; QUINTE WEST, COUNTY OF HASTINGS
PIN 40397-0165 (LT)	
Thumbnail Description	PT PARKLT 2-3 PL 232 MURRAY; PT LT 6 NE/S MARMORA ST, 7 NE/S MARMORA ST, 8 NE/S MARMORA ST, 6 SW/S MERCIA ST, 7 SW/S MERCIA ST, PL 240 MURRAY PT 5 21R19639; EXCEPT PT 1 21R22860; S/T EASEMENT IN GROSS PT 1 21R22094 AS IN HT34354; QUINTE WEST; COUNTY OF HASTINGS
PIN 40397-0171 (LT)	
Thumbnail Description	PT PARKLT 3 PL 232 & PT LTS 54, 55, 71, 72, 74 PL 255 MURRAY PT 6 21R19639; EXCEPT PT 3 21R22860 & PT 2 21R24129; S/T EASEMENT IN GROSS OVER PTS 3 & 4 21R22094 AS IN HT34354; QUINTE WEST; COUNTY OF HASTINGS
PIN 40397-0172 (LT)	
Thumbnail Description	PT PARKLT 3 PL 232 & PT LTS 54, 55, 71, 72, 74 PL 255 MURRAY PTS 6 & 7 21R19639; EXCEPT PT 2 21R24129; QUINTE WEST; COUNTY OF HASTINGS

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

PIN 40397-0154 (LT)	
Registration	Instrument No. HT199773 Registration Date: 2016/11/24 LIEN PARTIES FROM: HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE

PIN 40397-0162 (LT)	
Registration	Instrument No. HT199784 Registration Date: 2016/11/24 LIEN PARTIES FROM: HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE

PIN 40397-0165 (LT)	
Registration	Instrument No. HT199770 Registration Date: 2016/11/24 LIEN PARTIES FROM: HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE

PIN 40397-0171 (LT)	
Registration	Instrument No. HT199786 Registration Date: 2016/11/24 LIEN PARTIES FROM: HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE

PIN 40397-0172 (LT)	
Registration	Instrument No. HT199776 Registration Date: 2016/11/24 LIEN PARTIES FROM: HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE

Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants related to the Purchased Assets

(unaffected by the Vesting Order)

GENERAL

1. Encumbrances for real property taxes (which term includes charges, rates and assessments, and other governmental charges or levies) or charges for electricity, power, gas, water and other services and utilities in connection with any of the Real Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to the provisions of the Sale Agreement.
2. Registered easements, rights-of-way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any Governmental Authority or public utility; or any registered subdivision, development, servicing, site plan or other similar agreement with any Governmental Authority or public utility.
3. Facility sharing, cost sharing, tunnel, pedway, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or Governmental Authorities.
4. Restrictive covenants, private deed restrictions, and other similar land use controls or agreements.
5. Encroachments by any of the Real Property over neighbouring lands and encroachments over any of the Real Property by improvements of neighbouring landowners.
6. Any subsisting reservations, limitations, provisos, conditions or exceptions contained in the original grants of the Real Property from the Crown.
7. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario.
8. The provisions of Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning.
9. Any title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to any of the Purchased Assets.
10. Any title defects, irregularities or reservations in respect of any of the Purchased Assets.
11. The exceptions and qualifications to title found in Section 44(1) of the Land Titles Act.

12. Other than the Instruments set out in **Schedule “C”**, all encumbrances, rights, interests, claims, and matters whatsoever relating to or affecting the Purchased Assets, including without limitation those accepted by Purchaser pursuant to the Sale Agreement.

Where used above in this **Schedule “D”** the following terms have the following meanings:

“**Applicable Laws**” means all statutes, laws, by-laws, regulations, codes, directives, policies, guidelines, procedures, ordinances and orders of any Governmental Authorities or other public authority having jurisdiction and includes without limitation the *Personal Information Protection and Electronic Documents Act* (Canada) as well as any existing and/or future provincial legislation of similar effect, all Environmental Laws and the *Smoke Free Ontario Act*;

“**Environmental Laws**” means all present and future statutes, laws, by-laws, regulations, rules, directives, guidelines, policies, interpretations, decisions, ordinances, approvals, consents, licenses, permits and orders of Governmental Authorities or other public authorities having jurisdiction relating to or in connection with the environment or the protection or regulation of the environment, including, without limitation, the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended; and

“**Governmental Authority**” means any government, regulatory authority, government department, agency, commission, board, tribunal or court having jurisdiction on behalf of any nation, province or state or other subdivision thereof or any municipality, district or other subdivision thereof, and includes, without limitation, the Ontario Ministry of the Environment and the Technical Standards and Safety Authority.

SPECIFIC

PIN 40397-0154 (LT)	
Thumbnail Description	MERCIA ST PL 240 MURRAY (AKA HOWCUTT ST & AKA DIXON DR) (CLOSED BY BY-LAW QR640809) PT 2 PLAN 1749; S/T EASEMENT IN GROSS PT 2 21R22094 AS IN HT34354; QUINTE WEST; COUNTY OF HASTINGS
Registrations	<ol style="list-style-type: none">1) Instrument No. PL1749 Registration Date: 1967/02/13 PLAN MISCELLANEOUS2) Instrument No. QR548568 Registration Date: 1997/10/29 NOTICE REMARKS: AIRPORT ZONING REGULATIONS3) Instrument No. 21R22094 Registration Date: 2006/11/08 PLAN REFERENCE4) Instrument No. HT34354

	<p>Registration Date: 2007/06/29 TRANSFER EASEMENT PARTIES FROM: COLLINS, JOHN CHARLES MORRA, ANTONIETTA PARTIES TO: HYDRO ONE NETWORKS INC.</p> <p>5) Instrument No. HT36186 Registration Date: 2007/07/31 TRANSFER PARTIES FROM: COLLINS, JOHN CHARLES MORRA, ANTONIETTA PARTIES TO: 2139911 ONTARIO LIMITED</p> <p>6) Instrument No. HT103605 Registration Date: 2011/04/19 NOTICE PARTIES FROM: THE CORPORATION OF THE CITY OF QUINTE WEST</p>
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PIN 40397-0162 (LT)	
Thumbnail Description	PT OF HASTINGS ST PL 255 MURRAY (CLOSED BY QR260906) AKA DIXON DR, PT 4 21R22860; QUINTE WEST, COUNTY OF HASTINGS
Registrations	<p>1) Instrument No. PL255 Registration Date: 1886/11/09 PLAN SUBDIVISION</p> <p>2) Instrument No. QR260906 Registration Date: 1978/10/17 BYLAW</p> <p>3) Instrument No. 21R14361 Registration Date: 1991/04/30 PLAN REFERENCE</p> <p>4) Instrument No. QR548568 Registration Date: 1997/10/29 NOTICE REMARKS: AIRPORT ZONING REGULATIONS</p> <p>5) Instrument No. 21R22860 Registration Date: 2009/01/16 PLAN REFERENCE</p> <p>6) Instrument No. HT102133 Registration Date: 2011/03/18</p>

	<p>TRANSFER PARTIES FROM: THE CORPORATION OF THE CITY OF QUINTE WEST PARTIES TO: 2139911 ONTARIO LIMITED</p> <p>7) Instrument No. HT103605 Registration Date: 2011/04/19 NOTICE PARTIES FROM: THE CORPORATION OF THE CITY OF QUINTE WEST</p>
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Registrations	<ol style="list-style-type: none">1) Instrument No. PL1749 Registration Date: 1967/02/13 PLAN MISCELLANEOUS2) Instrument No. PL1750 Registration Date: 1967/02/13 PLAN MISCELLANEOUS3) Instrument No. QR548568 Registration Date: 1997/10/29 NOTICE REMARKS: AIRPORT ZONING REGULATIONS4) Instrument No. 21R19639 Registration Date: 2000/10/02 PLAN REFERENCE5) Instrument No. 21R22094 Registration Date: 2006/11/08 PLAN REFERENCE6) Instrument No. HT34354 Registration Date: 2007/06/29 TRANSFER EASEMENT PARTIES FROM: COLLINS, JOHN CHARLES MORRA, ANTONIETTA PARTIES TO: HYDRO ONE NETWORKS INC.

	<p>7) Instrument No. HT36186 Registration Date: 2007/07/31 TRANSFER PARTIES FROM: COLLINS, JOHN CHARLES MORRA, ANTONIETTA PARTIES TO: 2139911 ONTARIO LIMITED</p> <p>8) Instrument No. HT103605 Registration Date: 2011/04/19 NOTICE PARTIES FROM: THE CORPORATION OF THE CITY OF QUINTE WEST</p>
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Thumbnail Description	PT PARKLT 3 PL 232 & PT LTS 54, 55, 71, 72, 74 PL 255 MURRAY PT 6 21R19639; EXCEPT PT 3 21R22860 & PT 2 21R24129; S/T EASEMENT IN GROSS OVER PTS 3 & 4 21R22094 AS IN HT34354; QUINTE WEST; COUNTY OF HASTINGS
Registrations	<p>1) Instrument No. PL1750 Registration Date: 1967/02/13 PLAN MISCELLANEOUS</p> <p>2) Instrument No. QR548568 Registration Date: 1997/10/29 NOTICE REMARKS: AIRPORT ZONING REGULATIONS</p> <p>3) Instrument No. 21R19639 Registration Date: 2000/10/02 PLAN REFERENCE</p> <p>4) Instrument No. 21R22094 Registration Date: 2006/11/08 PLAN REFERENCE</p> <p>5) Instrument No. HT34354 Registration Date: 2007/06/29 TRANSFER EASEMENT PARTIES FROM: COLLINS, JOHN CHARLES MORRA, ANTONIETTA PARTIES TO: HYDRO ONE NETWORKS INC.</p> <p>6) Instrument No. HT36186</p>

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Registrations	<p>1) Instrument No. PL1750 Registration Date: 1967/02/13 PLAN MISCELLANEOUS</p> <p>2) Instrument No. QR548568 Registration Date: 1997/10/29 NOTICE REMARKS: AIRPORT ZONING REGULATIONS</p> <p>3) Instrument No. 21R19639 Registration Date: 2000/10/02 PLAN REFERENCE</p> <p>4) Instrument No. HT36186 Registration Date: 2007/07/31 TRANSFER PARTIES FROM: COLLINS, JOHN CHARLES MORRA, ANTONIETTA PARTIES TO: 2139911 ONTARIO LIMITED</p> <p>5) Instrument No. HT103605 Registration Date: 2011/04/19 NOTICE PARTIES FROM: THE CORPORATION OF THE CITY OF QUINTE WEST</p>

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MELISSA FISHER et al.
Respondents

Court File No. CV-15-355-00

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
KINGSTON

APPROVAL AND VESTING ORDER

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