

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

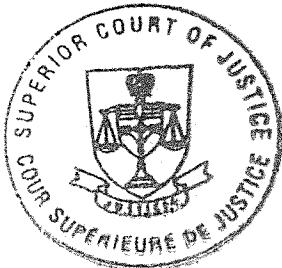
)

TUESDAY, THE 17TH

JUSTICE MCEWEN

)

DAY OF JULY, 2018



DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Crowe Soberman Inc in its capacity as receiver (the “**Receiver**”) of the property known municipally as 215 and 219 Lexington Road, Waterloo, Ontario N2K 2E1 (the “**Real Property**”), the assets and undertakings of Deem Management Services Limited (“**Deem Management**”) related to the Real Property (the “**Related Deem Assets**”), and the property, assets and undertakings (the “**Uptown Assets**”) of the Uptown Inc. (the “**Uptown**”, together with Deem Management the “**Debtors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and 10402672 Canada Inc. (the “**Purchaser**”) dated July 4, 2018 and appended to the Second Report of the Receiver dated July 9, 2018 (the “**Second Report**”), and vesting in the Purchaser the Debtors’ 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 and on hearing the submissions of counsel for the Receiver, any other party as indicated on the counsel slip, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of R. Brendan Bissell sworn July 10, 2018, filed:

1. THIS COURT ORDERS that the time for service of the Motion Record in respect of this motion and the Second Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.
2. 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.
3. 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**"), the Purchased Assets described in the Sale Agreement, including (i) all of Deem Management's right, title and interest in the Real Property, (ii) all of the right, title and interest of the Debtors in the Deem Related Assets and the Uptown Assets, and (iii) all of the right, title and interest of the Debtors in a lease of a part of the Real Property to Schlegel Villages Inc. dated May 1, 2017 as amended and the building permit, fees and securities described in Section 2.3 of the Sale Agreement, including 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 Justice Wilton-Siegel dated May 31, 2018; (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.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Waterloo (No. 58) 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.

5. 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.

6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

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 Debtors and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtors;

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 Debtors and shall not be void or voidable by creditors of the Debtors, 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 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 À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 17 2018

PER / PAR: RW

Schedule A – Form of Receiver's Certificate

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

PLAINTIFF

Plaintiff

- and -

DEFENDANT

Defendant

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Wilton-Siegel of the Ontario Superior Court of Justice (the "Court") dated May 31, 2018, Crowe Soberman Inc. was appointed as the receiver (the "Receiver") of the property known municipally as 215 and 219 Lexington Road, Waterloo, Ontario N2K 2E1 (the **"Real Property"**), the assets and undertakings of Deem Management Services Limited (**"Deem Management"**) related to the Real Property (the **"Related Deem Assets"**), and the property, assets and undertakings (the **"Uptown Assets"**) of the Uptown Inc. (the **"Uptown"**, together with Deem Management the **"Debtors"**).

B. Pursuant to an Order of the Court dated July 17, 2018, the Court approved the agreement of purchase and sale made as of July 4, 2018 (the **"Sale Agreement"**) between the Receiver and 10402672 Canada Inc. (the **"Purchaser"**) and provided for the vesting in the Purchaser of the Debtors' 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 section 6 of the Sale Agreement 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 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 section 6 of the Sale Agreement 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].

**Crowe Soberman Inc., in its capacity as
Receiver of the undertaking, property and
assets of Deem Management Services
Limited and The Uptown Inc. and not in its
personal capacity**

Per:

Name: Hans Rizarri

Title: President

Schedule B – Purchased Assets

Legal Description Of The Lands

PIN 22291-0628 (LT)

Property Description: PT. BLOCK A PLAN 1313, BEING PTS. 1, 4 & 5 ON 58R-6774 & PT. 3 ON 58R-2194, S/T EASEMENT IN GROSS OVER PT. 1 ON 58R-17857, AS IN WR853469; CITY OF WATERLOO

Address: 215 and 229 Lexington Road, Waterloo, Ontario N2K 2E1

Personal Property

ISSUED FOR BUILDING PERMIT

ARCHITECTURAL DRAWING LIST

JUNE 20 2014

- 001 COVER PAGE
- 002 DRAWING LIST, BUILDING STATISTICS, O.B.C MATRIX & CONTEXT PLAN
- 003 SITE PLAN
- 003A COMPLETE PHASING -SITE PLAN
- 004 WALL TYPE SCHEDULE
- 005 FIRE SEPARATION
- 101 B2 LEVEL
- 102 B1 LEVEL
- 103 GROUND & 2ND FLOOR LEVEL
- 104 3RD & 4TH FLOOR LEVEL
- 105 5TH & 6TH FLOOR LEVEL
- 106 MECHANICAL PENTHOUSE LEVEL & ROOF PLAN
- 201 BASEMENT 2ND LEVEL ENLARGED PLAN
- 202 BASEMENT 2ND LEVEL ENLARGED PLAN
- 203 BASEMENT 1ST LEVEL ENLARGED PLAN
- 204 BASEMENT 1ST LEVEL ENLARGED PLAN
- 205 GROUND FLOOR LEVEL ENLARGED PLAN
- 206 GROUND FLOOR LEVEL ENLARGED PLAN
- 207 2ND FLOOR LEVEL ENLARGED PLAN
- 208 2ND FLOOR LEVEL ENLARGED PLAN
- 209 3RD FLOOR LEVEL ENLARGED PLAN
- 210 3RD FLOOR LEVEL ENLARGED PLAN
- 211 4TH FLOOR LEVEL ENLARGED PLAN
- 212 4TH FLOOR LEVEL ENLARGED PLAN
- 213 5TH FLOOR LEVEL ENLARGED PLAN

214 5TH FLOOR LEVEL ENLARGED PLAN
215 6TH FLOOR LEVEL ENLARGED PLAN
216 6TH FLOOR LEVEL ENLARGED PLAN
217 MECHANICAL PENTHOUSE LEVEL ENLARGED PLAN
301 NORTH & WEST ELEVATIONS
302 SOUTH & EAST ELEVATIONS
401 BUILDING SECTIONS
402 BUILDING SECTIONS
403 BUILDING SECTIONS
502 WALL SECTIONS
701 TYPICAL DETAILS
702 TYPICAL DETAILS
801 STAIR PLANS & SECTIONS
802 STAIR PLANS & SECTIONS

PROJECT SPECIFICATIONS

UPTOWN PROJECT SPECIFICATIONS
ONESPACE UNLIMITED INC. JUNE 25
2014

412 PAGES

PROJECT DOCUMENTS & REPORTS

NOISE FEASIBILITY STUDY
HG ENGINEERING
MAY 6 2013

27 PAGES

PHASE 1 ENVIRONMENTAL SITE ASSESSMENT
EXP SERVICES INC.
DECEMBER 15 2014

69 PAGES

PHASE II ENVIRONMENTAL SITE ASSESSMENT
XCG CONSULTANTS LTD. SEPT 25
2006

87 PAGES

SUBSIDENCE DUE TO DEWATERING
EXP SERVICES INC.
DECEMBER 10 2014

4 PAGES

ADDITIONAL GEOTECHNICAL INVESTIGATION
EXP SERVICES INC.
MARCH 10 2014

26 PAGES

GEOTECHNICAL INVESTIGATION
EXP SERVICES INC.
NOVEMBER 21 2013

31 PAGES

GEOTECHNICAL INVESTIGATION
EXP SERVICES INC.
NOVEMBER 6 2013

21 PAGES

SUPPLEMENTAL GEOTECHNICAL INVESTIGATION
TROW ASSOCIATES INC.

26 PAGES

NOVEMBER 22 2010.

PRELIMINARY GEOCHEMICAL INVESTIGATION
TROW ASSOCIATES INC. APRIL 14
2010

37 PAGES

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

1. Instrument No. WR888817 being a charge registered on June 25 2015 from Deem Management Services Limited to Donald Dal Bianco;
2. Instrument No. WR88818 being a notice of assignment of rents registered on June 25, 2015 from from Deem Management Services Limited to Donald Dal Bianco;
3. Instrument No. WR1030186 being a notice of amendment of charge registered on May 8, 2017 from Deem Management Services Limited to Donald Dal Bianco;
4. Instrument No. WR1030622 being a charge registered on May 9, 2017 from Deem Management Services Limited to Institutional Mortgage Capital Canada Inc.;
5. Instrument No. WR1030648 being a postponement of charge registered on May 9, 2017 from Donald Dal Bianco in favour of Institutional Mortgage Capital Canada Inc.;
6. Instrument No. WR1099051 being a charge registered on February 23, 2018 from Deem Management Services Limited to Donald Dal Bianco;
7. Instrument No. WR1100946 being a construction lien registered on March 7, 2018 by Kieswater Excavating Inc.;
8. Instrument No. WR1102134 being a construction lien registered on March 14, 2018 by Deep Foundations Contractors Inc.;
9. Instrument No. WR1102923 being a construction lien registered on March 19, 2018 by Onospace Unlimited Inc.;
10. Instrument No. WR1104680 being a construction lien registered on March 29, 2018 by Maxion Management Services Inc.
11. Instrument No. WR1106904 being a construction lien registered on April 12, 2018 by exp Services Inc.;
12. Instrument No. WR1107271 being a certificate registered on April 16, 2018 by Kieswater Excavating Inc.;
13. Instrument No. WR1107360 being a certificate registered on April 16, 2018 by Deep Foundations Contractors Inc.;
14. Instrument No. WR1110511 being a certificate registered on May 2, 2018 by Onospace Unlimited Inc.; and
15. Instrument No. WR1118147 being an application to register a court order registered on June 12, 2018.
16. Instrument No. WR1120829 being a certificate registered on June 25, 2018 by Maxion Management Services Inc.

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

(unaffected by the Vesting Order)

1. Instrument No. 429796 being a development agreement registered August 5, 1970 between Lincoln Village Limited and The Corporation of the City of Waterloo;
2. Instrument No. 620622 being a development agreement registered February 8, 1970 between Pinehaven Nursing Home Limited and The Corporation of the City of Waterloo;
3. Instrument No. 620623 being a development agreement registered February 8, 1970 between Pinehaven Nursing Home Limited and The Corporation of the City of Waterloo;
4. Instrument No. 952613 being a development agreement registered July 22, 1988 between Lexington Holdings Limited and The Regional Musicality of Waterloo;
5. Instrument No. 956866 being a development agreement registered August 18, 1988 between Lexington Holdings Limited and The Corporation of the City of Waterloo;
6. Instrument No. WR853469 being a transfer easement registered November 27, 2014 between Deem Management Services Limited and Waterloo North Hydro Inc.
7. Instrument No. WR875231 being a site plan control agreement registered April 10, 2015 between Lexington Holdings Limited and The Corporation of the City of Waterloo;
8. Instrument No. WR1030548 being a notice of lease registered May 9, 2017 between Deem Management Services Limited and Schlegel Villages Inc., along with the associated lease dated May 1, 2017 between Deem Management Services Limited and Schlegel Villages Inc. as amended.

DONALD DAL BIANCO

and

**DEEM MANAGEMENT SERVICES LIMITED and THE
UPTOWN INC.**

Applicant

Respondents

Court File No. CV-18-598657-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO

APPROVAL AND VESTING ORDER

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Michael B. Rotsztain (LSUC #: 17086M)
Tel: 416-597-7870
Email: rotsztain@gsnh.com sw

R. Brendan Bissell (LSUC No. 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for the Receiver, Crowe Soberman Inc.