

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 22nd
JUSTICE CAVANAGH)
DAY OF NOVEMBER, 2023

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

**1340182 ONTARIO LIMITED and KAZEMBE & ASSOCIATES PROFESSIONAL
CORPORATION**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended

APPROVAL AND VESTING ORDER

THIS MOTION, made by **MNP Ltd.**, in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Kazembe & Associates Professional Corporation and 1340182 Ontario Limited (collectively 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 1000563411 Ontario Inc., (the "**Purchaser**") dated October 3, 2023 and appended to the Report of the Receiver dated November 10, 2023 (the "**Report**"), and vesting in 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 Report and on hearing the submissions of counsel for the Receiver, Applicant, 923944 Ontario Ltd., and Arthur Bryan, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Hayley Morgan sworn November 10, 2023, filed:

1. **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.

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 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 Osborne dated May 11, 2023 and the Order of the Honourable Justice Steele dated June 22, 2023; (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 the City of Toronto (No. 66) of an Application for Vesting 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 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.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-23-00698539-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Plaintiff

- and -

**1340182 ONTARIO LIMITED and KAZEMBE & ASSOCIATES PROFESSIONAL
CORPORATION**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Osborne dated May 11, 2023 and the Order of the Honourable Justice Steele dated June 22, 2023 of the Ontario Superior Court of Justice (the "**Court**"), MNP Ltd. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of 1340182 Ontario Limited and Kazembe & Associates Professional Corporation (collectively the "**Debtor**").

B. Pursuant to an Order of the Court dated November 22, 2023, the Court approved the agreement of purchase and sale made as of October 3, 2023 (the "**Sale Agreement**") between the Receiver and 1000563411 Ontario Inc. (the "**Purchaser**"), and provided for the vesting in 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 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 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].

MNP Ltd., in its capacity as Receiver of the undertaking, property and assets of Kazembe & Associates Professional Corporation and 1340182 Ontario Limited, and not in its personal capacity

Per: _____
Name:
Title:

Schedule B – Purchased Assets

PIN 10289-0036(LT)

LT 50 PL 1953 TWP OF YORK EXCEPT PT 14 EXPROP PL 7124 (NY431267); TORONTO (N YORK) ,
CITY OF TORONTO

Municipally known as: 1888 Wilson Avenue, Downsview, Ontario

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

1. Instrument No. AT5108239 registered April 4, 2019 - Charge in principal amount of \$1,000,000 in favour of 923944 Ontario Ltd.
2. Instrument No. AT5203051 registered August 1, 2019 - Charge in principal amount of \$945,000 in favour of Canadian Imperial Bank of Commerce.
3. Instrument No. AT6163499 registered August 8, 2022 - Charge in principal amount of \$200,000 in favour of Arthur Bryan.

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

(unaffected by the Vesting Order)

1. Instrument No. TR57844 registered March 27, 2000 – Notice in favour of HER MAJESTY THE QUEEN IN RIGHT OF THE DEPARTMENT OF TRANSPORT CANADA – PEARSON AIRPORT ZONING REGULATIONS

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COMMERCIAL LIST

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

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