

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 22nd
)
MR. JUSTICE CAVANAGH) DAY OF SEPTEMBER, 2021

CWB MAXIUM FINANCIAL INC.

Applicant

– and –

1612711 ONTARIO INC., 1612712 ONTARIO INC. and 1612714 ONTARIO INC.

Respondents

APPLICATION UNDER SUBSECTION 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

**ORDER
(APPROVAL AND VESTING ORDER)**

THIS MOTION made by the Applicant for an Order approving the sale transaction (the “Transaction”) contemplated by an agreement of purchase and sale (the “Sale Agreement”) to be entered into between MNP Ltd. in its capacity as the Court-appointed receiver (the “Receiver”) of the undertaking, property and assets of 1612711 Ontario Inc., 1612712 Ontario Inc. and

1612714 Ontario Inc. (collectively, the “Debtors”), and appended to the Notice of Application of the Applicant as Schedule “C” thereto, and vesting in 121 Victoria Inc., 115 Victoria Inc., and 236 Catharine Inc. (collectively, the “Purchasers”) 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 via videoconference.

ON READING the affidavit of Benjamin Wyett sworn September 3, 2021 and the exhibits thereto and on hearing the submissions of counsel for the applicant, the proposed Receiver, the proposed purchasers of the Respondents’ assets and undertaking, the Respondents and the Retirement Homes Regulatory Authority, and on being advised of the service upon the Canada Revenue Agency and that it did not oppose the motion by counsel for the Applicant, and on reading the consent of MNP Ltd. to act as the Receiver,

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver substantially in the form appended as Schedule “C” to the Notice of Application 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 Purchasers.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's Certificate to the Purchasers substantially in the form in the form attached as Schedule "1" hereto (the "Receiver's Certificate"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sales Agreement and listed on Schedule "2" hereto shall vest absolutely in the Purchasers, 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) all charges, security interests or claims evidence by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (ii) those Claims listed on Schedule "3" 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 "4") 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 Wentworth (#62) 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 Purchasers as the owners of the subject real property identified in Schedule "2" hereto (the "Real Property") directly opposite each of the Purchasers' respective names in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule "3" hereto.

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

5. THIS COURT ORDERS that, notwithstanding,

- a. the pendency of these proceedings;
- b. any applications for 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 Purchasers 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, 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.

6. 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.

Justice of the Superior Court of Justice

SCHEDULE “1” – FORM OF RECEIVER’S CERTIFICATE

Court File No. CV-21-00668142-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

CWB MAXIUM FINANCIAL INC.

Applicant

– and –

1612711 ONTARIO INC., 1612712 ONTARIO INC. and 1612714 ONTARIO INC.

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APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND
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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ____ Justice _____ of the Ontario Superior Court of Justice (the “Court”) dated _____, 2021, MNP Ltd. was appointed as the receiver (the “Receiver”) of the undertaking, property and assets of 1612711 Ontario Inc., 1612712 Ontario Inc. and 1612714 Ontario Inc. (collectively, the “Debtors”).

B. Pursuan to an Order of the Court dated _____, 2021, the Court approved the sale of the Purchased Assets, as defined in an agreement of purchase and sale made as of _____, 2021 (the "Sale Agreement") between the Receiver and 121 Victoria Inc., 115 Victoria Inc. and 236 Catharine Inc. (collectively, the "Purchasers"), and provided for the vesting in the Purchasers 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 satisfaction 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 Purchases; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECIEVER CERTIFIES the following:

1. The Purchasers have satisfied the requirement to pay the Purchase Price for the Purchased Assets on or before the Closing Date as provided in 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 _____ [TME] on _____
_____ [DATE].

**MNP Ltd. in its capacity as Receiver of the
assets, undertakings, and properties of 1612711
Ontario Inc., 1612712 Ontario Inc. and 1612714
Ontario Inc. and not in its personal capacity.**

Per: _____

Name:

Title:

SCHEDULE “2” – PURCHASED ASSETS

1. The following real property indicated opposite the name of the applicable Purchaser:

<u>Purchaser</u>	<u>Real Property</u>
121 Victoria Inc.	LOT 108, PLAN 223, HAMILTON, known municipally as 121 Victoria Avenue South, Hamilton, Ontario
115 Victoria Inc.	LOT 107, PLAN 223, HAMILTON, known municipally as 115 Victoria Avenue South, Hamilton, Ontario
236 Catharine Inc.	<i>Firstly (in Land Titles)</i> LOT 25 AND PART LOT 26, NATHANIEL HUGHSON SURVEY (EAST SIDE OF CATHARINE STREET) AND PART OF LOTS 25 AND 26, NATHANIEL HUGHSON SURVEY (WEST SIDE OF MARY STREET) DESIGNATED AS PARTS 1 AND 2, 62R12880, HAMILTON; <i>Secondly (in Registry)</i> - Part of Lot 5 Plan 365 as in VM232413; HAMILTON known municipally as 236 Catharine Street North, Hamilton, Ontario

2. The Purchased Assets as defined in the Sale Agreement, including the Residency Agreements; the Leases; the Chattels; the Personal Property; the Books and Records; and the Assumed Contracts (if any), all as defined in the Sale Agreement.

**SCHEDULE “3” – CLAIMS TO BE EXPUNGED AND DELETED FROM TITLE TO
REAL PROPERTY**

121 Victoria Avenue – PIN: 17177-0069 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
WE274806	2004/11/17	Application Vesting Order	\$188,100	Ontario Superior Court of Justice (Commercial List)	1612711 Ontario Inc.
WE875860	2012/12/21	Notice of option to Purchase		1612711 Ontario Inc.	2157720 Ontario Inc.
WE919265	2013/08/28	Application to Change Name Instrument		2157720 Ontario Inc.	Riverview Pharmacy Inc.
WE1172892	2016/12/15	Charge	\$1,000,000	1612711 Ontario Inc.	1584132 Ontario Ltd. 1584133 Ontario Ltd. 1584130 Ontario Ltd.
WE1173040	2016/12/15	Postponement		Riverview Pharmacy Inc	1584132 Ontario Ltd. 1584133 Ontario Ltd. 1584130 Ontario Ltd.
WE1324393	2018/11/29	Postponement		Riverview Pharmacy Inc	CWB Maxium Financial Inc.
WE1394921	2019/11/18	Charge	\$1,300,000	1612711 Ontario Inc.	Dapinderjeet Gill, Darshan Gill, Amneet Gill, Jasper Properties Inc., Manjinder Jagdev
WE1394953	2019/11/18	Notice of Assignment of Rents - General		1612711 Ontario Inc.	Dapinderjeet Gill, Darshan Gill, Amneet Gill, Jasper Properties Inc., Manjinder Jagdev
WE1430137	2020/05/11	Notice		Riverview Pharmacy Inc.	

115 Victoria Avenue – PIN: 17177-0068 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
WE274804	2004/11/17	Application Vesting Order	\$235,000	Ontario Superior Court of Justice (Commercial List)	1612712 Ontario Inc.
WE875861	2012/12/21	Notice of option to Purchase		1612712 Ontario Inc.	2157720 Ontario Inc.
WE919266	2013/08/28	Application to Change Name Instrument		2157720 Ontario Inc.	Riverview Pharmacy Inc.
WE1172891	2016/12/15	Charge	\$1,000,000	1612712 Ontario Inc.	1584132 Ontario Ltd. 1584133 Ontario Ltd. 1584130 Ontario Ltd.
WE1173037	2016/12/15	Postponement		Riverview Pharmacy Inc.	1584132 Ontario Ltd. 1584133 Ontario Ltd. 1584130 Ontario Ltd.
WE1324392	2018/11/29	Postponement		Riverview Pharmacy Inc.	CWB Maxium Financial Inc.
WE1394929	2019/11/18	Charge	\$1,300,000	1612712 Ontario Inc.	Dapinderjeet Gill, Darshan Gill, Amneet Gill, Jasper Properties Inc., Manjinder Jagdev
WE1394951	2019/11/18	Notice of Assignment of Rents - General		1612712 Ontario Inc.	Dapinderjeet Gill, Darshan Gill, Amneet Gill, Jasper Properties Inc., Manjinder Jagdev
WE1430136	2020/05/11	Notice		Riverview Pharmacy Inc.	

236 Catharine Street North – PIN: 17162-0004 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
WE274808	2004/11/17	Application Vesting Order	\$290,000	Ontario Superior Court of Justice (Commercial List)	1612714 Ontario Inc.
WE875855	2012/12/21	Notice of Option to Purchase		1612714 Ontario Inc.	2157720 Ontario Inc.
WE919263	2013/08/28	Application to Change Name Instrument		2157720 Ontario Inc.	Riverview Pharmacy Inc.
WE1172893	2016/12/15	Charge	\$1,000,000	1612714 Ontario Inc.	1584132 Ontario Ltd. 1584133 Ontario Ltd. 1584130 Ontario Ltd.
WE1173039	2016/12/15	Postponement		Riverview Pharmacy Inc.	1584132 Ontario Ltd. 1584133 Ontario Ltd. 1584130 Ontario Ltd.
WE1324391	2018/11/29	Postponement		Riverview Pharmacy Inc.	CWB Maxium Financial Inc.
WE1394919	2019/11/18	Charge	\$1,300,000	1612714 Ontario Inc.	Dapinderjeet Gill, Darshan Gill, Amneet Gill, Jasper Properties Inc., Manjinder Jagdev
WE1394955	2019/11/18	Notice of Assignment of Rents - General		1612714 Ontario Inc.	Dapinderjeet Gill, Darshan Gill, Amneet Gill, Jasper Properties Inc., Manjinder Jagdev
WE1430132	2020/05/11	Notice		Riverview Pharmacy Inc.	

236 Catharine Street North – PIN:17162-0380 (R)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
VM262676	2004/11/17	Court Order	\$290,000	Ontario Superior Court of Justice (Commercial List)	1612714 Ontario Inc.

VM279123	2009/02/23	Land Registrar's Amendment		Land Registrar, No 62	
VM282135	2016/12/20	Charge	\$1,000,000	1612714 Ontario Inc.	1584132 Ontario Ltd. 1584133 Ontario Ltd. 1584130 Ontario Ltd.
VM282337	2019/11/18	Charge	\$1,300,000	1612714 Ontario Inc.	Dapinderjeet Gill, Darshan Gill, Amneet Gill, Jasper Properties Inc., Manjinder Jagdev

**SCHEDULE “4” – PERMITTED ENCUMBRANCES, EASEMENTS AND
RESTRICTIVE COVENANTS RELATED TO THE REAL PROPERTY**

(unaffected by the Vesting Order)

1. The reservations, limitations, provisos, conditions, restrictions and exceptions expressed in the letters patent or grant from the Crown and all statutory exceptions to title;
2. The provisions of governing municipal by-laws;
3. Municipal taxes, liens, charges, including hydro and water charges, rates and assessments accruing from day to day and not yet due and payable;
4. Any minor encroachments which might be revealed by an up to date survey of the Real Property but which do not materially adversely affect the use and marketability of the Real Property;
5. Any right of expropriation conferred upon, reserved to or vesting in Her Majesty the Queen in Right of Canada and Ontario;
6. Any agreements, restrictions, covenants that run with the Real Property and any agreements with the municipal, utilities or public authorities provided that same have been complied with in all material respects and do not materially adversely affect the use and marketability of the Real Property;
7. Any easements, rights of way or right of re-entry, which do not impair the intended use of the Real Property, by the Purchasers, and provided that same have been complied within all material respects and do not materially adversely affect the use and marketability of the Real Property; and

8. The following instruments registered on title to the Real Property in the Wentworth Land Registry Office:

Property 1: 121 Victoria Avenue – PIN: 17177-0069 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
WE937787	2013/11/29	Charge	1,338,250	1612711 Ontario Inc.	Element Financial Corporation
WE937802	2013/11/29	Notice of Assignment of Rents – General		1612711 Ontario Inc.	Element Financial Corporation
WE1258343	2017/12/20	Application to Change Name – Instrument		Element Financial Corporation	Element Fleet Management Corp.
WE1258391	2017/12/20	Transfer of Charge		Element Fleet Management Corp.	ECN Financial Inc.
WE1258400	2017/12/20	Notice of Assignment of Rents - General		Element Fleet Management Corp.	ECN Financial Inc.
WE1275326	2018/03/27	Transfer of Charge		ECN Financial Inc.	CWB Maxium Financial Inc.
WE1275328	2018/03/27	Notice of Assignment of Rents - General		ECN Financial Inc.	CWB Maxium Financial Inc.
WE1484567	2021/01/19	Application – Government Order		City of Hamilton	
WE1484568	2021/01/19	Application – Government Order		City of Hamilton	

Property 2: 115 Victoria Avenue – PIN: 17177-0068 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
WE937788	2013/11/29	Charge	1,079,250	1612712 Ontario Inc.	Element Financial Corporation
WE937803	2013/11/29	Notice of Assignment of Rents – General		1612712 Ontario Inc.	Element Financial Corporation

WE1258343	2017/12/20	Application to Change Name – Instrument		Element Financial Corporation	Element Fleet Management Corp.
WE1258390	2017/12/20	Transfer of Charge		Element Fleet Management Corp.	ECN Financial Inc.
WE1258402	2017/12/20	Notice of Assignment of Rents - General		Element Fleet Management Corp.	ECN Financial Inc.
WE1275316	2018/03/27	Transfer of Charge		ECN Financial Inc.	CWB Maxium Financial Inc.
WE1275321	2018/03/27	Notice of Assignment of Rents - General		ECN Financial Inc.	CWB Maxium Financial Inc.
WE1484565	2021/01/19	Application – Government Order		City of Hamilton	
WE1484566	2021/01/19	Application – Government Order		City of Hamilton	

Property 3(A): 236 Catharine Street North – PIN: 17162-0004 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
62R12880	1993/12/30	Plan reference			
WE937789	2013/11/29	Charge	1,899,500	1612714 Ontario Inc.	Element Financial Corporation
WE937804	2013/11/29	Notice of Assignment of Rents – General		1612714 Ontario Inc.	Element Financial Corporation
WE1258343	2017/12/20	Application to Change Name – Instrument		Element Financial Corporation	Element Fleet Management Corp.
WE1258389	2017/12/20	Transfer of Charge		Element Fleet Management Corp.	ECN Financial Inc.
WE1258401	2017/12/20	Notice of Assignment of Rents - General		Element Fleet Management Corp.	ECN Financial Inc.

WE1275306	2018/03/27	Transfer of Charge		ECN Financial Inc.	CWB Maxium Financial Inc.
WE1275308	2018/03/27	Notice of Assignment of Rents - General		ECN Financial Inc.	CWB Maxium Financial Inc.

Property 3(B): 236 Catharine Street North – PIN:17162-0380 (R)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
VM281872	2013/12/04	Charge	1,899,500	1612714 Ontario Inc.	Element Financial Corporation
VM281899	2014/04/17	Notice of Assignment of Rents – General		1612714 Ontario Inc.	Element Financial Corporation

**CWB MAXIUM FINANCIAL INC., APPLICANT – AND –
1612711 ONTARIO INC. et al., RESPONDENTS**

Court File No: CV-21-00668142-00CL

**AND IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto**

**ORDER
(APPROVAL AND VESTING ORDER)**

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