

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE

ME

)

THURSDAY, THE 24TH DAY

JUSTICE

T. McEwen

)

OF MAY, 2018

BETWEEN:

**TREZ CAPITAL LIMITED PARTNERSHIP,
TREZ CAPITAL (2011) CORPORATION and
COMPUTERSHARE TRUST COMPANY OF CANADA**

Applicants

- and -

2481043 ONTARIO INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by MNP Ltd. in its capacity as the court-appointed receiver (the “**Receiver**”) of all of the assets, undertakings and properties of 2481043 Ontario Inc. (the “**Debtor**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale dated March 19, 2018 between the Receiver and Budget Acquisitions Inc., as amended by the Reinstatement and Amendment of Agreement of Purchase and Sale dated May 10, 2018 (the “**Sale Agreement**”), and appended to the First Report of the Receiver dated May 17, 2018 (the “**Report**”), and vesting in Don Mills Storage Inc. (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.

ON READING the Report and on hearing the submissions of counsel for the Receiver, for the Purchaser, for the Applicants and for the Respondent, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amy Casella sworn May 18, 2018, 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 tenancies, 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 Conway dated December 15, 2017; (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 B** 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 C**) 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 Toronto 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 subject real property identified in **Schedule D** 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 B 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, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

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 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 avoidable 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.

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 A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 25 2018

PER / PAR:



Schedule A – Form of Receiver’s Certificate

Court File No. CV-17-11800-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

**TREZ CAPITAL LIMITED PARTNERSHIP,
TREZ CAPITAL (2011) CORPORATION and
COMPUTERSHARE TRUST COMPANY OF CANADA**

Applicant

- and -

2481043 ONTARIO INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Conway dated December 15, 2017, MNP Ltd. was appointed as the receiver (the “**Receiver**”) of all of the assets, undertakings and properties of 2481043 Ontario Inc. (the “**Debtor**”), including all proceeds therefrom.

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the “**Sale Agreement**”) between the Receiver and [NAME OF PURCHASER] (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;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [TIME] on ►[DATE].

MNP Ltd., solely in its capacity as court-appointed Receiver of the assets, undertakings and properties of 2481043 Ontario Inc., and not in its personal or corporate capacity and without personal or corporate liability

Per: _____

Name:

Title:

I/We have authority to bind the Corporation.

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

1. Instrument No. AT4018126 registered September 25, 2015, being an Application to register Vesting Order by Ontario Superior Court of Justice.
2. Instrument No. AT4018127 registered September 25, 2015, being a Charge from 2481043 Ontario Inc. in favour of Computershare Trust Company of Canada securing the principal amount of \$30,000,000 (“**Computershare Charge**”).
3. Instrument No. AT4139375 registered February 5, 2016, being a Notice amending Computershare Charge.
4. Instrument No. AT4377751 registered October 21, 2016, being a Notice relating to Computershare Charge.
5. Instrument No. AT4377752 registered October 21, 2016, being a Notice of General Assignment of Rents pledged in connection with Computershare Charge.
6. Instrument No. AT4746898 registered November 30, 2017, being a Lien registered by Her Majesty the Queen in right of Canada as represented by the Minister of National Revenue.
7. Instrument No. AT4779080 registered January 12, 2018, being an Application to register a Court Order by Ontario Superior Court of Justice Commercial List.

**Schedule C – Permitted Encumbrances, Easements and
Restrictive Covenants related to the Real Property
(unaffected by the Vesting Order)**

1. Instrument No. NY380043 registered March 28, 1962 being a Transfer of Easement in favour of the Hydro-Electric Commission of the Township of North York.
2. Instrument No. 64BA723 registered October 17, 1975 being a registration described as “Plan Boundaries Act”

Schedule D – Legal Description

PIN: 10117-0593 (LT)

Description: PT LT 10 CON 3 EYS TWP OF YORK AS IN TB395970; S/T NY380043;
TORONTO (N YORK), CITY OF TORONTO

TREZ CAPITAL LIMITED PARTNERSHIP et al.

2481043 ONTARIO INC.

Applicants

Respondent

Court File No. CV-17-11800-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at TORONTO

APPROVAL AND VESTING ORDER

CHATONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 1M9

George Benchetrit (LSUC #34163h)
Tel: (416) 218-1141
Fax: (416) 218-1841
E-mail: george@chatons.com

**Lawyers for MNP Ltd, in its capacity as
court-appointed receiver of the assets,
undertakings and properties of 2481043
Ontario Inc.**