

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

THE HONOURABLE)
)
JUSTICE KIMMEL) MONDAY, THE 29TH
) DAY OF MAY, 2023

B E T W E E N:

(Court Seal)

CANADIAN WESTERN BANK

Applicant

and

**INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX
INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC.,
11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC.,
2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC.,
2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC.,
2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC.,
2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC.,
421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY
AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, RSO 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 Respondents, including lands and premises legally described in Schedule A hereto and municipally known as 421 Wharncliffe Road South, London, Ontario (the “**421 Property**”) for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) in respect of the property (the “421 P between the 421 Wharncliffe Ltd. (the “**Debtor**”) and Muhammad Saleem (in trust for a corporation to be formed, the “**Purchaser**”) dated March 29, 2023, as amended by

the First Amendment to Agreement of Purchase and Sale dated May 15, 2023, between the Receiver and the Purchaser (the “**Sale Agreement**”) and appended to the First Report of the Receiver dated May 23, 2023 (the “**First Report**”), and vesting in the Purchaser, the right, title and interest of the Debtor in and to the 421 Property, was heard this day via judicial video conference via zoom, at Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although served as appears from the affidavit of L. Nicole Lee sworn May 23, 2023, filed:

1. THIS COURT ORDERS that that the time for service of the Receiver’s Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

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 Property 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 B hereto (the “**Receiver’s Certificate**”), all of the right, title and interest of the Debtor in and to the 421 Property 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 Penny dated May 8, 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 hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the 421 Property are hereby expunged and discharged as against the Property.

4. THIS COURT ORDERS that upon the registration in Land Registry Office for the Land Titles Division of London/ Westminster 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 421 Property in fee simple, and is hereby directed to delete and expunge from title to the 421 Property all of the Claims listed in Schedule C hereto.

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 any of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Debtor;

the vesting of the 421 Property 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 any 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.

8. THIS COURT ORDERS that the First Report and the activities of the Receiver set out in the First Report be and are hereby approved.

9. THIS COURT ORDERS that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report detailed in paragraph 8 hereof.

Schedule A – Property

PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 IF ANY, S/T 583284 IF ANY; LONDON/WESTMINSTER

PIN 08398-0360(LT)

Schedule B – Form of Receiver’s Certificate

Court File No. CV-23-00698447-00CL

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

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

and

INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., 421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.

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IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c. C.43, AS AMENDED*

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an the Order of the Honourable Mr. Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 8, 2023, MNP Ltd. was appointed receiver (the “**Receiver**”) of the certain properties of 421 Wharncliffe Ltd. (the “**Debtor**”) and the other Respondents herein.

B. Pursuant to an Order of the Court dated May 29, 2023, the Court approved the transaction (the “**Transaction**”) contemplated in an Agreement of Purchase and Sale dated March 29, 2023 between the Debtor and Muhammad Saleem (in trust for a corporation to be formed, the “**Purchaser**”) as amended by the First Amendment to the Agreement of Purchase and Sale dated

May 15, 2023 between the Receiver and the Purchaser (the “**Sale Agreement**”), and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the real property known as PT LT 1, PL 29, PTS 1 & 2, 33R5153 & PT 2, 33R5487 S/T 837774 if any, S/T 583284 if any; London/Westminster (PIN 08398-0360(LT)) described more particularly in the Sale Agreement (the “**421 Property**”), which vesting is to be effective with respect to the Property 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 Property; and (ii) 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 Receiver has received the Purchase Price for the 421 Property payable 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.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ 2023.

[Signature follows on page 2 of this Certificate]

**MNP LTD., solely in its capacity as Receiver
of the other Respondents, and not in its
personal capacity.**

Per: _____

Name:

Title:

Schedule C

REGISTRATIONS TO BE DELETED FROM PIN 08398-0360 (LT)

1. Charge registered March 2, 2022 as Instrument No. ER1443829 in favour of Canadian Western Bank
2. Notice of Assignment of Rents General registered March 2, 2022 as Instrument No. ER1443830 in favour of Canadian Western Bank
3. Order registered September 22, 2022 as Instrument No. ER1490874 in favour of the Corporation of the City of London

**Schedule D – Permitted Encumbrances, Easements
and Restrictive Covenant related to the Real Property
REGISTRATIONS TO BE PERMITTED ON PIN 08398-0360 (LT)**

1. Notice registered March 3, 2022 as Instrument No. LT377222 in favour of J. Bottom Holdings Limited

CANADIAN WESTERN BANK
Applicant

-and- INDEX HOLDING GROUP INC. et al.
Respondents

Court File No. CV-23-00698447-00CL

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Service List