

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

THE HONOURABLE)
JUSTICE HAINEY)
MONDAY, THE 28TH
DAY OF SEPTEMBER, 2020

B E T W E E N:

1711423 ONTARIO LIMITED

Applicant

- and -

OLD MILL MARINA (KAWAGAMA) LIMITED

Respondent

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

**ORDER
(Approval and Vesting)**

THIS MOTION, made by MNP Ltd. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Old Mill Marina (Kawagama) Limited (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver and Pine Rock Holdings Limited ("**Pine Rock**") as purchaser, later assigned by Pine Rock to 2771470 Ontario Inc., (the "**Purchaser**") dated July 27, 2020 (the "**Sale Agreement**") and appended to the Report of the Receiver (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 by videoconference in accordance with Commercial List COVID 19 procedures.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Josset Johnson sworn September 23, 2020 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, including, without limitation, the Interim Operation and Occupation Agreement attached as an Appendix to the Report by the Receiver.

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 (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 McEwen dated March 9, 2020 (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 Land Registry Office No. 19, Land Titles Division of Haliburton, 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.

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, including personal information of those 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 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* 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.

A handwritten signature in cursive script, appearing to read "Stanley J.", is written over a horizontal line. The signature is fluid and extends to the right of the line.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-20-00637615-00CL

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- and -

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Respondent

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3, and Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable McEwen of the Ontario Superior Court of Justice (the "Court") dated March 9, 2020, MNP Ltd. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Old Mill Marina (Kawagama) Limited (the "**Debtor**").

B. Pursuant to an Order of the Court dated September 28, 2020, the Court approved the agreement of purchase and sale made as of July 27, 2020 (the "**Sale Agreement**") between the Receiver and 2771470 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 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 Old Mill Marina (Kawagama) Limited, and not in its personal or corporate capacity

Per: _____
Name:
Title:

Schedule B – Purchased Assets

Real Property: The property municipally known as 1652 and 1676 Russell Landing Road, Township of Algonquin Highlands, and legally described as PT LT 16 CON 12 SHERBORNE AS IN H87622 EXCEPT PT 1, 2, 3 19R1733 AND EXCEPT PT 2 19R5130; S/T H87622; TOWNSHIP OF ALGONQUIN HIGHLANDS, being all of PIN 39115-0241 (LT), together with all buildings, structures, improvements, systems, chattels and fixtures situated or located thereon or therein.

Personal and Intellectual Property: All Property, other than Real Property of the Debtor to be conveyed to the Purchaser pursuant to the Sale Agreement including, without limitation, all of the Debtor's chattels, personal property, Goodwill, Assigned Contracts (if any), Warranties, Client Lists, Books and Records, Equipment, Trailers, intellectual property (including all Licenses and Permits), office furniture and equipment(all capitalized terms in this Schedule carry the same meaning ascribed to them by definition in the Sale Agreement)”

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

The following instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. HA21205 registered on June 5, 2012, being a Charge in favour of Haliburton County Development Corporation in the principal amount of \$125,000 (the **“Haliburton Charge”**);
2. Instrument No. HA44419 registered on September 2, 2016, being a Charge in favour of 1711423 Ontario Limited (**“1711423”**) in the principal amount of \$750,000 (the **“1711423 Charge”**);
3. Instrument No. HA44420 registered on September 2, 2016, being a Notice of Assignment of Rents – General in favour of 1711423;
4. Instrument No. HA44421 registered on September 2, 2016, being a Postponement of Interest of the Haliburton Charge in favour of the 1711423 Charge;
5. Instrument No. HA53254 registered on March 1, 2018, being a Notice relating to the 1711423 Charge; and
6. Instrument No. HA60340 registered on June 18, 2019, being a Charge in favour of 1711423 in the principal amount of \$500,000.

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

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Property means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on the parcel register for the Real Property;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Real Property;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance, provided that any such work orders, deficiency notices and any other noncompliance are discoverable by the Purchaser no less than three (3) Business Days before the Waiver Date by way of an updated search with the applicable Governmental Authority, regardless of whether or not such search was performed;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices, provided that such breaches are discoverable by the Purchaser no less than three (3) Business Days before the Waiver Date by way of an updated search with the applicable Governmental Authority, regardless of whether or not such search was performed;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Defects or irregularities in title to the Real Property; and

10. Without in any way limiting the generality of any of the foregoing, the following specific instruments registered on title against the Real Property:
 - (a) Plan 19R203 deposited on April 23, 1971;
 - (b) Plan 19R752 deposited on June 10, 1975;
 - (c) Instrument No. H87622 registered on April 12, 1972, being a Transfer in favour of the Debtor and containing a subject to interest burdening the Real Property as noted in the legal description therefor; and
 - (d) Instrument No. HA64443 registered on March 10, 2020, being an Application to Register Court Order.

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Applicant

-and- OLD MILL MARINA (KAWAGAMA) LIMITED
Respondent

Court File No. CV-20-00637615-00CL

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COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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