



ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE) TUESDAY, THE 12TH
JUSTICE *ASTON*) DAY OF MARCH, 2019
)

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**TOMLIN INDUSTRIES (2000) INC., CAML NORTH AMERICA LTD., 7949952
CANADA INC. AND 7949987 CANADA INC.**

Defendants

APPROVAL AND VESTING ORDER

THIS MOTION, made by The Toronto-Dominion Bank (the "Bank") to appoint MNP Ltd. as the Court-appointed receiver (the "Receiver") of certain assets of 7949987 Canada Inc. (the "Debtor"), and others, and for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Zitta Immobilier Inc. (the "Purchaser"), and others, dated March 11, 2019 and appended to the Pre-Filing Report of MNP Ltd. as Proposed Receiver dated March 11, 2019 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the immovable property described in paragraph 1 of this Order, was heard this day at 80 Dundas Street, London, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver and the Bank, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Cathy Coleiro sworn March 5, 2019, filed:

VESTING THE IMMOVABLE PROPERTY IN ZITTA HOLDCO

1. THIS COURT ORDERS AND DECLARES that upon the delivery of the 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, if any, in and to the Immovable Property herein below described (the "**Immovable Property**") shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Immovable Property, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by the Order of the Honourable Justice [NAME] dated [DATE] and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in immovable property and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Immovable Property be cancelled and discharged as against the Immovable Property, in each case effective as of the applicable time and date of the Certificate.

LEGAL DESCRIPTION OF IMMOVABLE PROPERTY

An immovable known and designated as lot number FIVE MILLION EIGHT HUNDRED THIRTY-FIVE THOUSAND THIRTY-FIVE (5 835 035) of the Quebec Land Registry (*Cadastré du Québec*), Registration Division of Arthabaska.

With building erected thereon bearing civic address 2005-2015 rue Bécancour, Lyster, Quebec, G0S 1V0.

As the property now subsists with all of its rights, members and appurtenances, without exception or reserve of any kind.

2. THIS COURT ORDERS the Land Registrar of the Quebec Land Registry Office for the Registry Division of Arthabaska upon presentation of the Receiver's Certificate and a certified

copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing the Purchaser as the owner of the Immovable Property and (ii) to cancel any and all Encumbrances on Immovable Property, including, without limitation, the following registrations published at the said Land Registry Office:

- **An hypothec registered on August 30, 2013 at the Quebec Land Registry Office** for the Registry Division of Arthabaska, under number 20 228 439, in favor of Business Development Bank of Canada;
- **An hypothec registered on January 20, 2017 at the Quebec Land Registry Office** for the Registry Division of Arthabaska, under number 22 857 780, in favor of Business Development Bank of Canada;
- **A legal hypothec registered on April 10, 2018 at the Quebec Land Registry Office** for the Registry Division of Arthabaska, under number 23 751 304, in favor of Ministre du revenu du Québec.

LIMITATION OF LIABILITY

3. THIS COURT DECLARES that, subject to other orders of this Court, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Immovable Property. The Receiver shall not, as a result of this order, be deemed to be in possession of any of the Immovable Property within the meaning of environmental legislation, the whole pursuant to the terms of the *Bankruptcy and Insolvency Act*.

4. THIS COURT DECLARES that no action lies against the Receiver by reason of this order or the performance of any act authorized by this order, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph.

GENERAL

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Encumbrances, the net proceeds from the sale of the Immovable Property shall stand in the place and stead of the Immovable Property, and that from and after the delivery of the Receiver's Certificate all Encumbrances shall attach to the net proceeds from the sale of the Immovable Property with the same priority as they had with respect to the Immovable Property immediately

prior to the sale, as if the Immovable Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

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 Immovable 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 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.

9. THIS COURT ORDERS that the Purchaser or Receiver shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.

10. THIS COURT DECLARES that this Order shall have full force and effect in all provinces and territories in Canada.

11. THIS COURT ORDERS the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

ORDER ENTERED
MAR 12 2019
714



Schedule A – Form of Receiver’s Certificate

Court File No. 35-2214905T

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

BETWEEN:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

**TOMLIN INDUSTRIES (2000) INC., CAML NORTH AMERICA LTD., 7949952
CANADA INC. AND 7949987 CANADA INC.**

Defendants

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice In Bankruptcy and Insolvency (the "Court") dated March 12, 2019, MNP Ltd. was appointed as the receiver (the "Receiver") of certain assets of 7949987 Canada Inc., and others.

D. Pursuant to an Order of the Court dated March 12, 2019, the Court approved the agreement of purchase and sale dated March 11, 2019 (the "Sale Agreement") between the Receiver and Zitta Immobilier Inc. (the "Purchaser"), and others, and provided for the vesting in the Purchaser of 7949987 Canada Inc.’s right, title and interest, if any, in and to the Immovable Property, which vesting is to be effective 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 Immovable Property; (ii) that the conditions to Closing as set out in article four (4) of 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 section 4 of 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
certain assets of Tomlin Industries (2000)
Inc., Caml North America Ltd., 7949952
Canada Inc. and 7949987 Canada Inc., and
not in its personal capacity**

Per: _____

Name:

Title:

The Toronto-Dominion Bank
Plaintiff and

Tomlin Industries (2000) Inc., et al.
Defendants

Court File No.: 35-2214905T

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

APPROVAL AND VESTING ORDER

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