



Court File No. 35-2214905T

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE)

JUSTICE *ASTON*)

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)

TUESDAY, THE 12TH

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 Tomlin Industries (2000) Inc. ("Tomlin"), Caml North America Ltd. ("Caml"), 7949952 Canada Inc. ("794 Canada") and 7949987 Canada Inc. (collectively hereinafter referred to as the "Debtor") 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. and Les Produits Zitta Inc./Zitta Products Inc. ("Zitta Products") (collectively hereinafter referred to as the "Purchaser") 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 Personal Property as described and defined in the Sale Agreement, 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:

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, as described and defined in the Sale Agreement, to the Purchaser.

VESTING THE PERSONAL PROPERTY IN ZITTA PRODUCTS

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to Zitta Products substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of Tomlin, Caml and 794 Canada's right, title and interest, if any, in and to the Personal Property described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in Zitta Products, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, hypothecs, mortgages, pledges, title retention agreements, options to buy, rights of first refusal, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, assignments, judgments, executions, writs of seizure or execution, notices of sale, adverse claims, charges, or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or other financial or monetary claims, whether or not they have attached or been perfected, published, 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 [NAME] dated [DATE]; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* or any other personal property registry system (all of which are collectively referred to

as the "Encumbrances"); and, for greater certainty, this Court orders that the Encumbrances affecting or relating to the Personal Property are hereby expunged and discharged as against the Personal Property, in each case effective as of the applicable time and date of the Receiver's Certificate.

CANCELLATION AND REDUCTION OF SECURITY REGISTRATIONS

3. THIS COURT ORDERS the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Receiver's Certificate, to strike the registrations numbered:

For 7949952 Canada Inc

- Conventional hypothec without delivery on an universality of claims, receivables, inventory and movable property in an amount of \$700 000, registered in favour of Business Development Bank of Canada on August 30, 2013 under number 13-07688091-0002;

For 7949987 Canada Inc

- Conventional hypothec without delivery on an universality of movable property in an amount of \$700 000, registered in favour of Business Development Bank of Canada on August 30, 2013 under number 13-07688091-0001;
- Conventional hypothec without delivery on an universality of movable and immovable property in an amount of \$270 000, registered in favour of Business Development Bank of Canada on January 27th, 2017 under number 17-0075761-0001;

3.1 THIS COURT ORDERS the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Receiver's Certificate, to reduce the scope of the following registration numbers so that those hypothecs will only continue to affect the Excluded Assets detailed at Schedule "D":

For 7949952 Canada Inc

- Conventional hypothec without delivery on an universality of property, and movable property in an amount of \$2 400 000, registered in favour of The Toronto-Dominion Bank on October 24, 2011 under number 11-0813869-0001;

For 7949987 Canada Inc

- Conventional hypothec without delivery on an universality of movable property, and movable property in an amount of \$2 400 000, registered in favour of The Toronto-Dominion Bank on October 24, 2011 under number 11-0813874-0001;

For CAML North America Ltd.

- Conventional hypothec without delivery on an universality of all movable property in an amount of \$5 100 000, registered in favour of The Toronto-Dominion Bank on November 21, 2013 under number 13-1038149-0001 and renewed on September 19, 2018 under number 18-1032223-0001;

Tomlin Industries (2000) Inc.

- Conventional hypothec without delivery on an universality of all movable property in an amount of \$5 100 000, registered in favour of The Toronto-Dominion Bank on November 21, 2013 under number 13-1038149-0002 and renewed on September 19, 2018 under number 18-1032223-0002;

LIMITATION OF LIABILITY

4. 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 Personal Property. The Receiver shall not, as a result of this order, be deemed to be in possession of any of the Personal Property within the meaning of environmental legislation, the whole pursuant to the terms of the *Bankruptcy and Insolvency Act*.

5. 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

6. 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.

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

8. 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 listed on Schedule "D" to the Sale Agreement. 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.

9. 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* (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.

10. 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.

11. THIS COURT ORDERS that the Purchaser and the Receiver shall be authorized to take all steps as may be necessary to effect the reduction of the Encumbrances referred to in section 3.1 hereinabove, to the extent specified therein, and to effect the discharge of any other Encumbrances.

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

13. 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.





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 Tomlin Industries (2000) Inc. ("Tomlin"), Caml North America Ltd. ("Caml"), 7949952 Canada Inc. ("794 Canada") and 7949987 Canada Inc.

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. ("Zitta Holdco") and Les Produits Zitta Inc./Zitta Products Inc. ("Zitta Products") (collectively hereinafter referred to as the "Purchaser") and provided for the vesting in Zitta Products of Tomlin, Caml and 794 Canada’s right, title and interest, if any, in and to the Personal 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 Purchased Assets; (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 Personal Property payable on the Closing Date pursuant to the Sale Agreement;
2. 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
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:

Schedule B – Purchased Assets

(Subject to defined terms in the Sale Agreement)

- all Business Inventory. “Business Inventory” means all inventories of the Operating Companies, which means Tomlin Industries (2000) Inc., Caml North America Ltd., 7949952 Canada Inc. collectively, on the Closing Date related to the Business of every kind and nature including all finished goods, work in progress, raw materials, ingredients, packaging materials, production, new and unused production and shipping supplies, spare parts, maintenance items and advertising materials, and all other materials and supplies on hand to be used or consumed in the production of the products of the Business, in each case on hand, in transit, ordered and paid for, but not delivered, warehoused or wherever situated, including at a customer’s premises. “Closing Date” means, subject to any other closing conditions, as soon as practically possible following the issuance of the Approval and Vesting Order, or the dismissal of any appeal in respect of the Approval and Vesting Order, provided the Approval and Vesting Order has not been stayed prior to the Closing Time, or such other date agreed to by the parties hereto in writing for the completion of the Transaction; or such other time as the parties may mutually agree;
- all prepaid expenses as of the Closing Time. “Closing Time” means a time agreed to between the parties on the Closing Date;
- all machinery, tools, chattels, movables, furniture, furnishings, forklifts, racking, office furniture, removable tenant’s fixtures, manufacturing equipment, moulds, artwork, equipment and tangible personal property used or held for use in the conduct of the Business as of the Inventory Date wherever located, subject to any changes made by the Companies in the ordinary course of business after the Execution Date. “Inventory Date” means February 11, 2019. “Execution Date” means the date upon which this Agreement has been executed and accepted by the Vendor;
- all computer hardware;
- all Business Information. “Business Information” means financial and operating data, Books and Records and other business information relating to the Business including, without limitation, supplier information, sales data, operating procedures, practices and customer list, accounting systems, vendor’s lists, price books, catalogues, sales and purchase history, files, data and information relating to customers and prospective customers including, without limitation, the customer list which has been delivered by the Companies to the Purchaser prior to the date hereof, current outstanding customer order lists, issued customer quotations,

practices and all such other Business Information related to the Purchased Assets which may be requested from the Purchaser prior to the Closing Date, acting reasonably. Books and Records means all books, records, files and documents relating to the Business, including without limitation, books of account, ledgers, journals, sales and purchase records, lists of suppliers, credit information, cost pricing information, business reports, plans and projections and all other correspondence, data and information, financial or otherwise, in any format and media whatsoever, related to the Business;

- all Assumed Contracts. “Assumed Contracts” means those contracts which the Purchaser has elected by providing written notice to the Vendor, at its sole discretion, to assume on Closing;
- all Intellectual Property. “Intellectual Property” means all rights arising out of or associated therewith, in any jurisdiction, whether registered or not, including any or all: (i) Patents, patent applications and patent rights, and the subject matter thereof; (ii) Trade-marks, trade-mark applications, trade names, service marks, brand names, certification marks, trade dress and other indications of origin, whether registered or not and the goodwill associated therewith; (iii) copyrights, whether registered or not, and the subject matter thereof, including computer programs, source codes, databases and the documentation therefore; (iv) trade secrets and other confidential or non-public innovation including inventions, discoveries, formulae, compositions, inventor's notes, discoveries and improvements, know-how, manufacturing and production processes and techniques (including for scale-up), research and development innovation, drawings, schematics, specifications, plans, proposals, technical data technical products drawings, specification sheets, products renderings, product images, marketing materials and sources files; (vi) any similar intellectual or industrial property or proprietary rights including industrial designs; (vii) registrations of, and applications to register any of the foregoing, and any renewal, extension, reissue, division, continuation, continuation in part, patent of addition, re-examination, derivation or modification thereof;
- the Trade-marks. “Trade-marks” mean the following Application/Registrations:
 - 1158976 / TMA639846
 - 1173384 / TMA629002
 - 1377618 / TMA742316
 - 1670525 / TMA919544
 - 1191493 / TMA631537/

- 1191492 / MA631539
- 1191494 / TMA631542
- 1191491 / TMA626141
- the Patents. “Patents” means the following:
 - Canadian Patent No. CA2490372C;
 - US Patent No. US7454802B2;
 - Canadian Patent No. CA2976189C; and
 - US Patent No. Pending – Application # 15/674,996 (Publication No.: US2018/0045344A1);
- all Permits. “Permits” mean to the extent transferable, all franchises, certifications, licences, registrations, consents, permits, registrations, exemptions, waives, filings, privileges, and other approvals, qualifications for the conduct of the Business as may be required by any Governmental Authority or third parties;
- all domain names, email accounts, websites and social media accounts used in or relating to the Business including, without limitation the following:
- Websites:

<http://www.tomlingroup.ca/>

<http://slikportfolio.com/>

<http://camltomlin.com/>

<http://acryline.ca/>

<http://www.acrylineusa.com/>

- Facebook:
Caml Tomlin, The Tomlin Group (Tomlin Group), Acryline
- LinkedIn:
Tomlin Group, CAML Tomlin, Acryline, Slik Portfolio
- Twitter:
[@thetomlingroup](#); [@slikoutdoor](#); [@slikportfolio](#)
- all telephone numbers, fax numbers, computers, cellular phones and cellular numbers used in or relating to the Business; and
- all access rights to the Personal Property, including passwords, systems, codes, links and keys;

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

Not Applicable

Schedule D – Excluded Assets

(unaffected by the Vesting Order)

(Subject to defined terms in the Sale Agreement)

- all Business Receivables. “Business Receivables” means all accounts receivable resulting from the sale of the Companies’ goods and services and other debts due to the Companies, or either of them, outstanding on the Closing Date, and including all books and records to evidence same;;
- all Equipment Leases. “Equipment Leases” means all leases for equipment between the Operating Companies and third parties, save for those that shall be Assumed Contracts;
- all cash, bank balances, moneys in the possession of banks and other depositories, term or time deposits, guaranteed investment certificates, treasury bills, other securities and other similar cash or cash equivalent items;
- income tax refunds and other tax refunds receivable by the Companies;
- all corporate and income tax records; and,
- the benefit of insurance policies on the life of any shareholder of the Companies, and any insurance policies held by the Companies in connection with the Business, Employees and Personal Property. “Employees” means the employees of the Companies employed at the Business as at the Execution Date.

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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