

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

MR. JUSTICE D. BROWN

)

WEDNESDAY, THE 18TH

)

DAY OF DECEMBER, 2013

B E T W E E N:

HSBC BANK CANADA

Applicant

and

MAHVASH LECHIER-KIMEL

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by Zeifman Partners Inc. in its capacity as the Court-appointed receiver (the “Receiver”) of the real property municipally described as 40 Park Lane Circle, Toronto, Ontario registered in the name of Mahvash Lechcier-Kimel (the “Debtor”) for an order approving an auction sale transaction (the “Transaction”) contemplated by an agreement of purchase and sale (the “Sale Agreement”) between David Aiello as Purchaser and the Receiver as Seller dated November 26, 2013, and appended as Exhibit F to the Third Report of the Receiver dated December 2, 2013 (the “Report”), and vesting in the Purchaser title to the property described in the Sale Agreement (the “Purchased Assets”) and for further orders approving the activities of the Receiver to date, the fees and expenses of the Receiver and its counsel, and for further and other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, and for M. Goldfinger, no one appearing for any other person on the service list, although

properly served as appears from the Affidavit of Kellie Engelhardt sworn December 6, 2013, 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 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 Brown dated April 18, 2013; (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 the Land Registry Office for the Land Titles Division at Toronto (No.66) 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 Purchasers as the owners 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, 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 settlement, 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 ORDERS that the Receiver shall be permitted to pay, from the proceeds of sale,

- (a) all transaction costs, amounts borrowed by the Receiver, and other costs related to the closing of the Transaction; and,
- (b) outstanding municipal and other taxes payable,

and shall hold the net proceeds pending further order of this Court.

8. THIS COURT ORDERS that Dr. M. Goldfinger may file written submissions to the balance of the relief sought on this motion being paragraphs (d), (e) and (g) of the Notice of Motion, (the "fee issues"), by January 17, 2014. Reply submissions, if any, may be filed in writing by January 24, 2014. The fee issues will then be dealt with by way of motion in writing.

DEC 19 2013

MB

A handwritten signature in black ink, appearing to be "M. Goldfinger", written over a horizontal line.

Schedule "A" – Form of Receiver's Certificate

Court File No. CV-13-9989-00CL

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B E T W E E N:

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RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Brown of the Ontario Superior Court of Justice (the "Court") dated April 18, 2013, Zeifman Partners Inc. was appointed as the receiver (the "Receiver") of the property described as 40 Park Lane Circle, Toronto, Ontario (the "Real Property") owned by the Respondent Mahvash Lechier-Kimel (the "Debtor").

B. Pursuant to an Order of the Court dated December 18, 2013, the Court approved the agreement of purchase and sale made as of November 26, 2013 (the "Sale Agreement") between the Receiver, Zeifman Partners Inc. and David Aiello (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Real Property, which vesting is to be effective with respect to the Real 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 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 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 Toronto, Ontario on _____, 2014,
at

AM/PM.

Zeifman Partners Inc., in its capacity as Receiver of the
Real Property, and not in its personal capacity

Name: A. Rutman

Title: Vice President

Schedule "B" – Purchased Assets

Pt. BLK A PL2584 North York; PtW1/2 LTS CIN2 EYS TWP OF YORK AS IN
CA54297; TORONTO (N. YORK), CITY OF TORONTO [PIN 10368-0427
(LT)]

Schedule "C"

ENCUMBRANCES TO BE DISCHARGED, RELEASED OR VESTED OFF

PIN NO. 10368-0427 (LT)

1. Instrument No. AT1802315 registered June 11, 2008 is a Charge to HSBC Bank Canada in the original principal amount of \$9,500,000.
2. Instrument No. AT1965316 registered December 2, 2008 is a Court Order of the Ontario Superior Court of Justice.
3. Instrument No. AT2293350 registered January 29, 2010 is a Charge to Morris Goldfinger in the original principal amount of \$5,000,000.
4. Instrument No. AT2441624 registered July 8, 2010 is a Construction Lien registered by Platinum Electrical Contractors Inc.
5. Instrument No. AT2447499 registered July 15, 2010 is a Certificate registered by Platinum Electrical Contractors Inc.
6. Instrument No. AT2464514 registered July 30, 2010 is a Construction Lien registered by Viana Roofing & Sheet Metal Ltd.
7. Instrument No. AT2504758 registered September 15, 2010 is a Certificate registered by Viana Roofing & Sheet Metal Ltd.
8. Instrument No. AT2523747 registered October 8, 2010 is a Court Order of the Ontario Superior Court of Justice.
9. Instrument No. AT2613597 registered February 2, 2011 is a Lien of Her Majesty the Queen in Right of Canada as represented by The Minister of National Revenue.
10. Instrument No. AT3371194 registered August 7, 2013 is a Court Order of the Ontario Superior Court of Justice.

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

PERMITTED ENCUMBRANCES

GENERAL

1. Encumbrances for real property taxes (which term includes charges, rates and assessments, and other governmental charges or levies) or charges for electricity, power, gas, water and other services and utilities in connection with the Property that (i) have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to the Agreement, or (ii) the validity of which is being contested in good faith.
2. Registered easements, rights-of-way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any Governmental Authority or public utility; or any registered subdivision, development, servicing, site plan or other similar agreement with any Governmental Authority or public utility.
3. Facility sharing, cost sharing, tunnel, pedway, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or Governmental Authorities.
4. Restrictive covenants, private deed restrictions, and other similar land use controls or agreements.
5. Encroachments by any of the Property over neighbouring lands and encroachments over any of the Property by improvements of neighbouring landowners.
6. Any subsisting reservations, limitations, provisos, conditions or exceptions contained in the original grant of the Property from the Crown.
7. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario.
8. The provisions of Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning.
9. Any title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Property.
10. Any title defects, irregularities or reservations in respect of the Property.
11. The exceptions and qualifications to title found in Section 44(1) of the *Land Titles Act* (Ontario) as amended.
12. All other Encumbrances that are Permitted Encumbrances.

SPECIFIC – (PIN NO. 10368-0427 (LT))

1. Instrument No. 64BA1529 registered October 25, 1979, Plan Boundaries Act
2. Transfer being Instrument No. AT180

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Applicant

-and-

MAHVASH LECHIER-KIMEL
Respondent

Court File No. CV-13-9989-00CL

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PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Lawyers for the Court-Appointed Receiver,
Zeifman Partners Inc.

TORONTO: 4485165 (101126)

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