

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 12TH DAY
)
JUSTICE LEDERMAN) OF NOVEMBER, 2010

BETWEEN:

BANK OF MONTREAL

Applicant

- and -



**R.M.J. HOLDINGS LTD., E.S.A. PROPERTIES LTD.
and APELOWICZ REALTY HOLDINGS LTD.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Zeifman Partners Inc. ("**ZPI**"), in its capacity as the proposed Court-appointed receiver (in such capacity, the "**Receiver**"), without security, of certain real property of R.M.J. Holdings Ltd., E.S.A. Properties Ltd. and Apelowicz Realty Holdings Ltd. (collectively, the "**Debtors**") for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and 2255695 Ontario Limited (the "**Purchaser**") dated October 18, 2010,

and vesting in the Purchaser all of the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of ZPI, in its capacity as the proposed Court-appointed receiver dated November 8, 2010 (the "**First Report**"), the Affidavit of Tony Crowe sworn November 8, 2010, and on hearing the submissions of counsel for the Receiver, the Purchaser, the Debtors, Bank of Montreal, Royal Bank of Canada, and Discount Car & Truck Rentals Ltd., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Susy Moniz sworn November 8, 2010, filed,

1. **THIS COURT ORDERS** that the First Report be and is hereby approved and the actions of the Receiver described therein be and are hereby approved.
2. **THIS COURT ORDERS** that Confidential Exhibit "A", Confidential Exhibit "B" and Confidential Exhibit "C" of the First Report be and are hereby sealed until the completion of the Transaction, or until further order of this Honourable Court.
3. **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.

4. **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 Debtors' 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 Lederman dated November 12, 2010; (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.

5. **THIS COURT ORDERS AND DECLARES** that upon the registration in the Land Registry Office for the appropriate Land Titles Division 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 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.

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, 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 Debtors, or each of them, and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors, or each of them,

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 Debtors, or each of them, and shall not be void or voidable by creditors of the Debtors, or each of them, 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.


9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

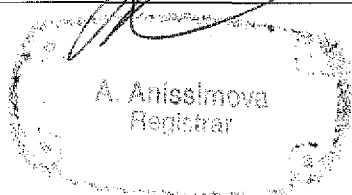
10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 30 2010

PER / PAR:





A. Anissimova
Registrar

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
BANKRUPTCY / COMMERCIAL
COURTS
330 UNIVERSITY AVENUE
7TH FLOOR
TORONTO, ONTARIO M5G 1R7

Schedule "A" – Form of Receiver's Certificate

Court File No. CV-10-8974-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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- and -

**R.M.J. HOLDINGS LTD., E.S.A. PROPERTIES LTD.
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RECEIVER'S CERTIFICATE

RECITALS

(A) Pursuant to an order of the Honourable Justice Lederman of the Ontario Superior Court of Justice (the "**Court**") dated November 12, 2010 (the "**Order**"), Zeifman Partners Inc. ("**ZPI**") was appointed as the receiver (in such capacity, the "**Receiver**"), without security, of certain real property of R.M.J. Holdings Ltd., E.S.A. Properties Ltd. and Apelowicz Realty Holdings Ltd. (collectively, the "**Debtors**").

(B) Pursuant to an Order of the Court dated November 12, 2010, the Court approved the agreement of purchase and sale dated October 18, 2010 (the "**Sale Agreement**") between the

Receiver and 2255695 Ontario Limited (the “**Purchaser**”), and provided for the vesting in the Purchaser all of the Debtors’ right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

ZEIFMAN PARTNERS INC., solely in its capacity as Receiver of the Property (as defined in the Order) of the Debtors (as defined in the Order), and not in its personal capacity

Per: _____

Name: Allan A. Rutman

Title: President

SCHEDULE "B"
LEGAL DESCRIPTION OF PROPERTIES

1585 Lansdowne Street West, Peterborough, Ontario

Part Lot 7, Concession 11 (North Monaghan) designated as Part 11, Plan 11465; City of Peterborough

Pin No. 28051-0220(LT)

1597 Lansdowne Street West, Peterborough, Ontario

Part Lot 7, Concession 11 (North Monaghan), As in Instrument No. R523813, Except Part 1, Plan 45R-14925; City of Peterborough

PIN No. 28051-0247(LT)

101 Simcoe Street North and 20 William Street, Oshawa, Ontario

Part Lot 1 North Side William Street, Plan H50003; City of Oshawa; Part Lot 2 North Side William Street, Plan H50003; City of Oshawa; Part Lot 3 North Side William Street, Plan H50013; City of Oshawa, designated as Parts 1 and 2, Plan 40R-18849; City of Oshawa

PIN No. 16315-0008(LT)

1271 Pembroke Street West, Pembroke, Ontario

Part Lot 20, Concession 1; City of Pembroke, designated as Part 1, Plan 49R-8075; City of Pembroke

PIN No. 57139-0193(LT)

SCHEDULE "C"
INSTRUMENTS TO BE DELETED FROM TITLE TO PROPERTIES

1585 Lansdowne Street West, Peterborough

1. Instrument No. RE118868 is a Charge registered February 3, 2010 in favour of Discount Car & Truck Rentals Ltd. in the principal sum of \$1,200,000.00.

1597 Lansdowne Street West, Peterborough

1. Instrument No. RE118868 is a Charge registered February 3, 2010 in favour of Discount Car & Truck Rentals Ltd. in the principal sum of \$1,200,000.00.

101 Simcoe Street North and 20 William Street East, Oshawa, Ontario

1. Instrument No. DR874239 is a Charge registered February 3, 2010 in favour of Discount Car & Truck Rentals Ltd. in the principal sum of \$1,200,000.00.

1271 Pembroke Street West, Pembroke

1. Instrument No. RE116928 is a Charge registered February 3, 2010 in favour of Discount Car & Truck Rentals Ltd. in the principal sum of \$1,200,000.00.

SCHEDULE "D"
PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS

1585 Lansdowne Street West, Peterborough

1. Instrument No. R157513 is a Bylaw registered February 23, 1966.
2. Reference Plan 45R-11465.
3. Instrument No. LT64741 is an Application (General) re Development Agreement registered May 27, 1999 between Tandaxe Homes Ltd. and The Corporation of the City of Peterborough.
4. Instrument No. LT64742 is an Application Annex Restrictive Covenant registered May 27, 1999.
5. Instrument No. PE9588 is an Application (General) re: Site Plan Agreement registered September 21, 2004 between R.M.J. Holdings Ltd. and The Corporation of the City of Peterborough

1597 Lansdowne Street West, Peterborough

1. Instrument No. R157513 is a Bylaw registered February 23, 1966.

101 Simcoe Street West and 20 William Street East, Oshawa

1. Instrument No. D210915 is a Notice re Airport Zoning Regulation registered December 16, 1985.
2. Reference Plan 40R-18849.

1271 Pembroke Street West, Pembroke

1. Reference Plan 49R-8075.
2. Instrument No. RE32113 is a Notice re agreement registered February 22, 2005 between Conseil Scolaire de District Catholique du Centre-Est De L'Ontario and 1534046 Ontario Inc.

BANK OF MONTREAL

- and -

R.M.J. HOLDINGS LTD. et al.

Applicant

Respondents

Court File No. CV-10-8974-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

AIRD & BERLIS LLP

Barristers and Solicitors

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Lawyers for Zeifman Partners Inc.