

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

THURSDAY, THE 28th

JUSTICE PATTILLO

)

DAY OF JULY, 2016

)



BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

and

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

APPROVAL AND VESTING ORDER

THIS MOTION, made by Zeifman Partners Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Vandermeer Greenhouses Ltd. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale and a Reinstatement and Amendment Agreement dated June 22, 2016 (together, the "Sale Agreement") between the Receiver and Lakshana Kumarage o/a fresh 4 you (the "Purchaser") and appended to the Report of the Receiver dated July 18, 2016 (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 at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for Meridian Credit Union Limited, and counsel for the Interested Parties, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Chloe Eng sworn July 19, 2016 filed:

1. THIS COURT ORDERS AND DECLARES that the time for service and filing of the notice of motion and the motion record herein shall be abridged and further service thereof shall be dispensed with.
2. 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 (including, without limitation, such minor amendments and extensions as the Receiver deems appropriate in its sole discretion) as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. 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 of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 21, 2014; (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.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Niagara North (Land Registry Office No. 30) 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.

5. 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.

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, 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. 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.

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 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.

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

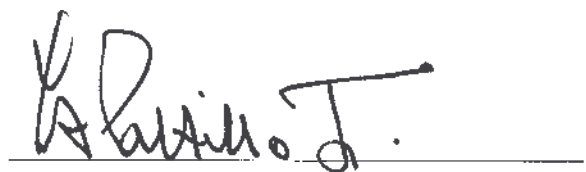
10. THIS COURT ORDERS AND DECLARES that the purchase price set out in the Sale Agreement shall be sealed and shall not form part of the public record until the completion of the Transaction and the filing of the Receiver's Certificate.

11. 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 À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 28 2016

PER / PAR:



Schedule A – Form of Receiver’s Certificate

Court File No. CV-14-10443-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

MERIDIAN CREDIT UNION LIMITED

Applicant

and

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER] (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 section •

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 • 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].

**[NAME OF RECEIVER], in its capacity as
Receiver of the undertaking, property and
assets of [DEBTOR], and not in its personal
capacity**

Per: _____

Name:

Title:

Schedule B -- Purchased Assets

MUNICIPAL ADDRESS:

2003 – 2021 Four Mile Creek Road, Town of Niagara-On-The-Lake, Ontario

FIRSTLY:

PIN 46390-0007 (LT)

PT LT 2-3 TP PL 167 NIAGARA AS IN RO532676, PT 1, 3, 4 30R4733; S/T RO532677;
NIAGARA-ON-THE-LAKE

SECONDLY:

PIN 46390-0008 (LT)

PT LT 3 TP PL 167 NIAGARA PT 2 30R4733; NIAGARA-ON-THE-LAKE

THIRDLY:

PIN 46390-0011 (LT)

PT LT 4 TP PL 167 NIAGARA PT 2 30R4110; NIAGARA-ON-THE-LAKE

FOURTHLY

PIN 46390-0074 (LT)

PT LT 108 PL M11, PTS 2 & 3 30R10152; NIAGARA ON THE LAKE; M11 IS CONFIRMED BY PL
BA179; M11 IS NOT A PLAN OF SUBDIVISION WITHIN THE MEANING OF THE PLANNING ACT

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

1. Instrument No. NR185256 registered on August 15, 2008 being a Charge/Mortgage in favor of Meridian Credit Union Limited in the principal amount of \$5,000,000.00
2. Instrument No. NR185257 registered on August 15, 2008 being a Postponement Of Interest from Pieter Van Der Meer, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel to Meridian Credit Union Limited; and
3. Instrument No. RO746644 registered on October 6, 1998 being a Charge/Mortgage in favor of Pieter Van Der Meer, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel in the principal amount of \$1,080,326.

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

(unaffected by the Vesting Order)

1. Instrument No. NTP14408 registered on June 12, 1951 being a By-Law;
2. Instrument No. 30BA179 registered on December 16, 1969 being a Plan under the Boundries Act.
3. Instrument No. 30R10152 registered on April 23, 2001 being a Reference Plan;
4. Instrument No. LT196879 registered on May 3, 2001 being a Transfer;
5. Instrument No. NR146923 registered on July 24, 2007 being a Transfer;
6. Instrument No. NR146924 registered on July 24, 2007 being a Transfer;
7. Instrument No. NR179218 registered on June 19, 2008 being a Notice of a Site Plan Agreement among The Corporation Of The Town Of Niagara-On-The-Lake, Vandermeer Greenhouses Ltd. and Meridian Credit Union Limited, Pieter Van Der Meer, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel;
8. Instrument No. NR235748 registered on April 7, 2010 being a Notice of a Site Plan Agreement among The Corporation Of The Town Of Niagara-On-The-Lake, Vandermeer Greenhouses Ltd. and Meridian Credit Union Limited, Pieter Van Der, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel;
9. Instrument No. 30R4679 registered on November 21, 1986 being a Reference Plan;
10. Instrument No. 30R4733 registered on January 2, 1987 being a Reference Plan;
11. Instrument No. RO532677 registered on January 7, 1987 being a Transfer Easement in favor of The Corporation Of The Town Of Niagara-On-The-Lake.
12. Instrument No. RO746459 registered on October 1, 1998 being a Transfer;
13. Instrument No. RO781206 registered on June 1, 2001 being a Transfer; and
14. Instrument No. 30R4110 registered on February 26, 1985 being a Reference Plan

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

Court File No. CV-14-10443-00CL
VANDERMEER GREENHOUSES LTD.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

FOGLER, RUBINOFF LLP

Lawyers

77 King Street West

Suite 3000, P.O. Box 95

TD Centre North Tower

Toronto, ON M5K 1G8

Greg Azeff (LSUC# 43524C)

gazeff@foglers.com

Tel: 416.864.9700

Fax: 416.941.8852

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