

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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*

**SUPPLEMENTARY APPLICATION RECORD
(Returnable on February 21, 2014)**

February 19, 2014

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INDEX

TAB	DOCUMENT
1	AFFIDAVIT OF BERNIE HUBER, SWORN FEBRUARY 19, 2014
A	Agreement between Zeifman Partners Inc. and Green Tower Industries Inc. dated February 22, 2014

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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*

**AFFIDAVIT OF BERNIE HUBER
(Sworn February 19, 2014)**

I, BERNIE HUBER, of the City of St. Catharines, in the Regional Municipality of Niagara and Province of Ontario, MAKE OATH AND SAY:

1. I am a Senior Commercial Credit Specialist with the Applicant, Meridian Credit Union Limited ("Meridian"). I have responsibility for matters pertaining to Vandermeer Greenhouses Ltd. (the "Company") and, as such, have personal knowledge of the matters to which I depose.
2. Where this affidavit has been made based on information received from others I verily believe it to be true.

3. I make this affidavit further to my affidavit sworn January 31, 2014 (the "First Affidavit") in this proceeding.

NEW CIRCUMSTANCES

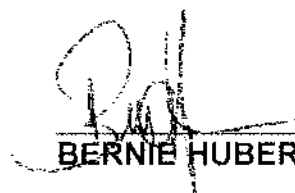
4. As set out in the First Affidavit, the marketing effort by Zeifman Partners Inc. ("Zeifman") has recently generated interest from at least one serious potential purchaser, Green Tower Industries Inc. ("GTI"). The negotiations are continuing with GTI, and Zeifman is optimistic that an agreement of purchase and sale will be successfully concluded with GTI.
5. At GTI's request, Zeifman and GTI have entered into an interim agreement effective February 22, 2014, which provides GTI with the right to manage and operate the business of the Company during the ongoing negotiations (the "Interim GTI Agreement"). A copy of the Interim GTI Agreement is attached and marked as Exhibit 'A'.
6. Particularly in light of the Interim GTI Agreement, and the encouraging progress of the negotiations of the negotiations with GTI, I believe that it would be just and convenient for the Court to appoint a receiver as sought in Meridian's application.

7. I make this affidavit in support of Meridian's application for the appointment of a receiver over the assets of the Company, and for no other or improper purpose.

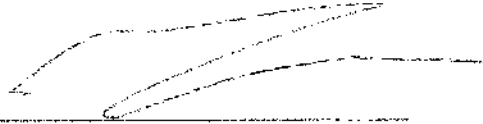
Sworn before me at the City
of St. Catharines, in the Regional
Municipality of Niagara
this 19th day of February, 2014



A Commissioner, etc.

)
)
)
) 
BERNIE HUBER

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 19th DAY OF FEBRUARY, 2014

A handwritten signature in dark ink, consisting of several sweeping, connected strokes, positioned above a horizontal line.

A Commissioner, etc.

THIS AGREEMENT made as of the 22th day of February, 2014.

BETWEEN:

ZEIFMAN PARTNERS INC., solely in its capacity as
receiver of all the property and assets and
undertaking of Vandermeer Greenhouses Ltd.

(hereinafter referred to as the "Receiver")

OF THE FIRST PART

- and -

GREEN TOWER INDUSTRIES INC.

(hereinafter referred to as the "Green Tower")

RECITALS

1. The Receiver was appointed as Receiver of the property, assets and undertakings of Vandermeer Greenhouses Ltd. ("Vandermeer") pursuant to an appointment dated July 19, 2011.
2. An Application is pending to the Ontario Superior Court of Justice ("Court") for an Order to appoint the Receiver as a Court Appointed Receiver (the "Order").
3. The Receiver and Green Tower are negotiating an agreement of purchase and sale for the sale to Green Tower of the property, assets and undertakings of Vandermeer ("Assets").
4. Green Tower has represented that it has the experience to efficiently manage and operate the business of Vandermeer ("Business") during the negotiations of the sale of the Assets to Green Tower (the "Interim Period").
5. Green Tower has further represented that it will use best efforts to preserve and protect the Assets during the Interim Period.
6. During the Interim Period, Green Tower is willing to carry on the operations of the Business for its own account, at its own financial risk and for its own financial reward, so that any profits or loss from the operation of the Business will accrue to Green Tower.

- 6
7. Green Tower has agreed to continue the operation of the Business to preserve value and to enable the Receiver to negotiate the sale of the Assets to Green Tower.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

Operation of the Business

1. Green Tower shall manage and operate the Business during the Interim Period in a commercially reasonable manner and will use its best efforts to preserve and protect the Assets from the date of this Agreement until the earlier of the Termination of this Agreement or the completion of the sale of the Assets to Green Tower as may be approved by the Court. Without limiting the foregoing, Green Tower shall use its best efforts to respond to all service requests as best it is able and to do so on a timely basis in order to maintain the confidence of customers and the goodwill associated with the Business during the Interim Period.
2. (a) Subject to paragraph 2 (b) Green Tower shall be responsible to pay for all costs to continue the Business pursuant to this Agreement, including but not limited to the occupation costs, wages, material costs, licensing fees and equipment rental fees, and all other costs and expenses associated with the operation of the Business including but not limited to, taxes, licenses, insurance, and any other costs or liabilities incidental to operating the Business.

(b) Green Tower acknowledged the two houses on the Business premises are being occupied by Darryl Robinson and Mike Busch and Green Tower shall not be entitled to terminate their occupancy of the houses or to terminate their employment or the employment of any other employee, without consultation and the written approval of the Receiver.
3. Green Tower hereby agrees that the Receiver shall not be liable for any claims, debts, costs, expenses, damages, compensation or liabilities (the "Claims") resulting from Green Tower's possession, management and use of the Assets or Green Tower's operation of the Business and Green Tower hereby agrees to indemnify and hold the Receiver harmless from all actions, causes of action, suits, claims, demands, awards, legal fees and interest arising out of or in connection with any Claims; provided that such indemnity shall not extend to or include any Claims which may arise as a result of the Receiver's gross negligence or willful misconduct.
4. (a) Green Tower shall obtain at its expense insurance coverage which coverage shall name the Receiver and Meridian Credit Union Limited as co-insured on terms and conditions satisfactory to the Receiver with a minimum general liability coverage of \$5,000,000.00.

(b) The Insurance coverage is to be in effect prior to Green Tower taking control and management of the Business.

- 7
5. The Receiver makes no representations or warranties with respect to the status of the Business, the existence of any of the customers, the satisfaction of any of those customers with the Business, or any other matter or thing connected with the viability of the Business, its profitability or the effectiveness of the delivering of services to its customers. Green Tower acknowledges that it is assuming operation of the Business on an "as is, where is basis".
 6. Green Tower undertakes that during the Interim Period, the Assets will be properly maintained, serviced and accounted for and protected.

The Purchase Agreement

7. During the Interim Period the Receiver and Green Tower shall use their best efforts to negotiate a sale agreement of the Assets.
8. The parties hereto acknowledge that any negotiated agreement to sell the Assets to Green Tower is subject to the approval by the Court.

Compliance and Reporting

9. Green Tower shall continue with the consulting services of Darryl Robinson at Green Tower's expense, who shall ensure Green Tower's compliance with all environmental and regulatory requirements concerning the operation of the digester and report thereon to the Receiver.
10. In addition, Green Tower shall provide regular updates and reports to the Receiver as requested by the Receiver from time to time and provide the Receiver with access to the Business such as the Receiver may require from time to time.
11. Green Tower, including its directors, officers, agents, servants, shareholders, employees and representatives shall cooperate fully with the Receiver in the exercise of its powers and discharge of its obligations.
12. Green Tower shall provide monthly reporting to the Receiver verifying payments in respect to source deductions, HST, WSIB, salaries and utilities payments. The first report for the month ending March 14, 2014 shall be due by the last day of March and on the last day of each month thereafter.

Adjustments and Payment to the Receiver

13. Green Tower shall pay the Receiver \$17,000.00 per month (or any part month) plus HST during the term of this Agreement on the 22nd day of each month beginning on February 22, 2014.

14. During the term of this Agreement the Receiver shall continue to collect the digester revenue from Niagara-on-the-Lake Hydro and apply the proceeds therefrom on account of the monthly payment described in paragraph 13.
15. The Receiver shall on a monthly basis account for the Hydro Revenue and any adjustment as to any amounts owed by one party to the other shall be paid within five (5) days of Receiver's determination of the same.

Term and Termination

16. This Agreement shall commence on February 22, 2014 and end on May 23, 2014 unless terminated earlier in accordance with paragraph 17.
17. Either party shall be entitled to terminate this Agreement on thirty (30) days' written notice to the other.
18. Upon Termination each party shall be entitled to an accounting from the other party as contemplated by this Agreement.
19. Any payment that may be payable pursuant to paragraph 18, shall be paid within five (5) days of the later of completion and delivery to Green Tower, of the accounting by the Receiver and the completion and delivery of the accounting by Green Tower to the Receiver.

Notice

20. Any notice required or permitted to be given hereunder shall be in writing and shall be effectively given if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by telecopier, telex or other similar means of electronic communication (confirmed on the same or following day by prepaid mail) addressed, in the case of notice to the Receiver, as follows:

201 Bridgeland Avenue
Toronto, Ontario
M5A 1Y7
Attention: Allan A. Rutman
Telephone: 416-256-4005
Facsimile: 416-256-4001
email: arutman@zeifmans.ca

and in the case of notice to Green Tower, as follows:

Telephone:
Facsimile:

Any notice so given shall be deemed conclusively to have been given and received when so personally delivered or sent by telex, telecopier or other electronic communication or on the second day following the sending thereof by private courier or mail. Any party hereto may change any particulars of its address for notice by notice to the others in the manner aforesaid.

General

21. *Expenses.* Each party shall be responsible for its own legal fees and other charges incurred in connection with the preparation of this Agreement, all negotiations between the parties and the consummation of the transactions contemplated hereby.
22. *Further Assurances.* Each of the parties hereto will from time to time at the other's request and expense and without further consideration, execute and deliver such other instruments of transfer, conveyance and assignment and take such further action as the other may require to more effectively complete any matter provided for herein.
23. *Entire Agreement.* This Agreement constitutes the entire agreement among the parties and except as herein stated and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the representations and warranties of the respective parties. There are no oral representations or warranties among the parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by both parties.
24. *Applicable Law.* This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.
25. *Successors and Assigns.* This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
26. *Severability.* In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable by a Court of competent jurisdiction, the remaining provisions hereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable provisions had not been included herein.

Counterparts

27. This Agreement may be executed in several counterparts. A counterpart, once executed, shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. Counterparts may be executed either in original, fax or other electronic form and the parties may adopt any signatures received by fax or email as original signatures of the parties. Provided however that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed or emailed.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first above written.

ZEIFMAN PARTNERS INC. solely in its
capacity as Receiver of the
property and assets and undertakings of
Vandermeer Greenhouses Ltd.

Per:



Name: Allan Rubman
Title: President

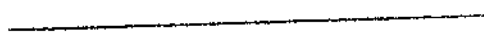
I have the authority to bind the Corporation

GREEN TOWER INDUSTRIES INC.

Per:



Per:



We have the authority to bind the Corporation

Plaintiff

Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT
TORONTO

AFFIDAVIT OF BERNIE HUBER

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LSUC# 36417N

-and-

Defendant

Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT
TORONTO

SUPPLEMENTARY APPLICATION RECORD

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