

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.)
JUSTICE HAINEY)
TUESDAY, THE 8th DAY
OF SEPTEMBER, 2020

BETWEEN:

**ANTHONY ZANARDO IN HIS CAPACITY AS
THE ESTATE TRUSTEE FOR THE ESTATE OF LUIGI GAMBIN**

Applicant

- and -

**DI BATTISTA GAMBIN DEVELOPMENTS LIMITED,
RAY DI BATTISTA, ANTHONY DI BATTISTA, JULIA BABENSKY,
WHITWOOD DEVELOPMENTS LTD. and GREYSTAR DEVELOPMENTS INC.**

Respondents

APPLICATION UNDER Sections 207 and 248 of the Ontario *Business Corporations Act*,
R.S.O. 1990, c. B-16, as amended.

APPROVAL AND VESTING ORDER

THIS MOTION made by Zeifman Partners Inc. (“**Zeifman**”), in its capacity as the court-appointed liquidator (in such capacity, the “**Liquidator**”) of the estate and effects of the Respondents, Di Battista Gambin Developments Limited (“**DBG**”) and Whitwood Developments Ltd. (“**Whitwood**” and together with DBG, the “**Companies**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between Zeifman, in its capacity as the Liquidator of DBG, and 1190543 Ontario Inc. (the “**Purchaser**”) dated April 23, 2020, as amended (the “**Sale Agreement**”), an unredacted copy of which is attached as Confidential Appendix 1 to the Third Report of the Liquidator dated August 31, 2020 (the “**Third Report**”), and vesting in the Purchaser all of the right, title and interest of

the Liquidator and DBG in and to the Purchased Assets (as defined in the Sale Agreement), was heard this day via ZOOM videoconference as a result of the COVID-19 pandemic.

ON READING the Third Report and the appendices thereto and on hearing the submissions of counsel for the Liquidator, the Applicant, the Respondent and those parties listed on the counsel slip, no one else appearing for any other person although duly served as appears from the affidavit of service of Danny Nunes sworn August 31, 2020, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF SALE AGREEMENT

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved and the execution of the Sale Agreement by the Liquidator is hereby authorized and approved, with such minor amendments as the Liquidator may deem necessary. The Liquidator 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, or as it may direct.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Liquidator's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Liquidator's Certificate**"), all of the right, title and interest of the Liquidator and DBG in and to the Purchased Assets described in the Sale Agreement, including without limitation the subject real property identified in Schedule "B" hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, or as it may direct, 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, leases, notices of lease, subleases, licenses, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, 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 Mr. Justice Dunphy dated August 16, 2018; (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 and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

4. **THIS COURT ORDERS** that upon registration in the Land Registry Office for the Land Titles Division of Peel (#43) 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 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 place and stead of the Purchased Assets, and that from and after the delivery of the Liquidator'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 Liquidator to file with the Court a copy of the Liquidator's Certificate, forthwith after delivery thereof.

7. **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) (the "BIA") in respect of the DBG and any bankruptcy order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of DBG;

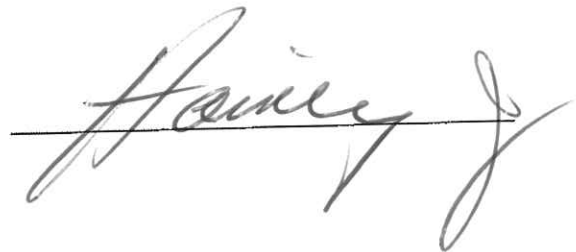
the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of DBG and shall not be void or voidable by creditors of DBG, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA 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.

SEALING

8. **THIS COURT ORDERS** that Confidential Appendices 1 and 2 to the Third Report shall be sealed pending further Order of this Court.

GENERAL

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Liquidator 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 Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.

A handwritten signature in cursive script, appearing to read "Honey J", written over a horizontal line.

SCHEDULE "A"

FORM OF LIQUIDATOR'S CERTIFICATE

Court File No. CV-17-11812-00CL

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Applicant

- and -

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LIQUIDATOR'S CERTIFICATE

RECITALS

I. Pursuant to the Order of the Honourable Mr. Justice Dunphy of the Ontario Superior Court (Commercial List) (the "**Court**") dated August 16, 2018, Zeifman Partners Inc. was appointed as the liquidator (in such capacity, the "**Liquidator**"), of the estate and effects of the Respondents, Di Battista Gambin Developments Limited ("**DBG**") and Whitwood Developments Ltd. (together, the "**Companies**").

II. Pursuant to an Order of the Court dated September 8, 2020, the Court approved the agreement of purchase and sale between Zeifman, in its capacity as the Liquidator of DBG, and

1190543 Ontario Inc. (the "Purchaser") dated April 23, 2020, as amended (the "Sale Agreement"), and provided for the vesting in the Purchaser of all the Liquidator's and DBG's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement).

III. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

THE LIQUIDATOR CERTIFIES the following:

1. The Purchaser has paid and the Liquidator 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 Liquidator and the Purchaser;
3. The transaction has been completed to the satisfaction of the Liquidator; and
4. This Certificate was delivered by the Liquidator at _____ [TIME] on _____ [DATE].

ZEIFMAN PARTNERS INC., in its capacity as court-appointed liquidator of the estate and effects of Di Battista Gambin Developments Limited and Whitwood Developments Ltd., and not in its personal or corporate capacity.

Name:
Title:

SCHEDULE "B"

LEGAL DESCRIPTION OF REAL PROPERTY

**PART OF LOTS 23, 24 & 25, REGISTERED PLAN TOR12 SDS BEING PART 3, PLAN OF
REFERENCE 43R-3375 CITY OF MISSISSAUGA, REGIONAL MUNICIPALITY OF PEEL.**

Municipally known as 130 Dundas Street East, Mississauga, Ontario.

SCHEDULE "C"

INSTRUMENTS/ENCUMBRANCES TO BE DELETED

1. Application to Register Court Order registered on March 14, 2019 as Instrument No. PR3456621

SCHEDULE "D"

PERMITTED ENCUMBRANCES

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 have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
2. Any subsisting restrictions, exceptions, reservations, limitation, provisos and conditions (including royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grants from the Crown.
3. Easements, rights of way, and servitudes and other similar rights in land granted to, reserved or taken by any Governmental Authority, transit authority or public or private utility supplier.
4. Subdivision agreements, site plan control agreements, development agreements or other similar agreements with any Governmental Authority, transit authority or public or private utility supplier.
5. Restrictive covenants, private deed restrictions and other similar land use controls or agreements registered on title.
6. Undetermined or inchoate liens and charges incidental to current construction or current operations which have not been filed or registered according to Applicable Law and which relate to obligations neither due nor delinquent provided all amounts owing in respect thereof are adjusted for on Closing.
7. Minor title defects or irregularities which do not, in the aggregate, materially impair the use, operation or marketability of the Real Property.
8. Minor title defects, irregularities, easements, reserves, encroachments, rights of way or other discrepancies in title or possession relating to the Real Property that are disclosed by any survey or that would be disclosed by an up-to-date survey of the Property.
9. Statutory exceptions, reservations, limitations, provisos, qualifications and conditions to title contained in Section 44(1) of the *Land Titles Act* (Ontario), but not including the matters listed in paragraphs 4 and 11 thereof.
10. The provisions of Applicable Laws including zoning, land use, development and building restrictions, by-laws, regulations, ordinances of Governmental Authorities and similar instruments, including municipal by-laws and regulations, airport zoning regulations, restrictive covenants and other land use limitations, public or private, by-laws and regulations and other restrictions as to the use of the Real Property.
11. Instrument No. VS385427 registered on March 15, 1976, being an agreement with The Corporation of the City of Mississauga.
12. Instrument No. VS385428 registered on March 15, 1976, being an agreement with The Corporation of the City of Mississauga.

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Applicant

- and -

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Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

ORDER
(Approval and Vesting Order)

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Lawyers for Zeiffman Partners Inc., in its capacity as the Liquidator of Di Battista
Gambin Developments Limited and Whitwood Developments Ltd.