

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 8TH
JUSTICE CONWAY) DAY OF JANUARY, 2021

B E T W E E N:

HILLMOUNT CAPITAL INC.

Applicant

and

CELINE BRITTANY PIZALE and RICHARD STANLEY PIZALE

Respondents

APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

APPROVAL AND VESTING ORDER

THIS MOTION, made by Zeifman Partners Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the property known as 83 Lyndhurst Avenue, Toronto, Ontario for orders (i) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Patricia Armstrong and David Armstrong (the "**Purchasers**") dated September 21, 2020 and amended on November 16, 2020 and appended to the Report of the Receiver dated December 4, 2020 (the "**Second Report**"), (ii) vesting in the Purchasers, or as they may direct, the right, title and interest in and to the Property, (iii) approving the Second Report and the activities, actions and conduct of the Receiver as set out in the Second Report, (iv) authorizing the Receiver to borrow from the Applicant such

amounts as the Receiver may deem appropriate up to a limit of \$250,000, (v) approving the fees and disbursements of the Receiver for the period from June 19, 2020 to November 30, 2020 as set out in the affidavit of Allan Rutman sworn November 30, 2020 and the fees and disbursements of Fogler, Rubinoff LLP ("**Fogler, Rubinoff**") as counsel to the Receiver for the period from June 19, 2020 to November 29, 2020 as set out in the affidavit of Joseph Fried sworn December 4, 2020 (together, the "**Fee Affidavits**") and (iv) sealing the Confidential Appendices to the Second Report included in the Confidential Compendium dated December 4, 2020 (the "**Confidential Compendium**") was heard this day by videoconference.

ON READING the Second Report, the Confidential Compendium the Fee Affidavits and the Receiver's First Supplement to the Second Report, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list:

1. **THIS COURT ORDERS** that the time for service of this motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
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 as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Property to the Purchasers.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchasers substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the right, title and interest in and to the Property shall vest absolutely in the Purchasers, 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, cautions, 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 including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Koehnen dated June 19, 2020; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Construction Act* (Ontario), the *Execution Act* (Ontario) or the *Land Titles Act* (Ontario) or any other personal property or real property registry system; (iii) those Claims listed on Schedule "C" hereto and (iv) those Claims listed on Schedule "D" hereto (the Claims listed on Schedule "C" and Schedule "D" are individually and collectively referred to as the "**Claims**") and, for greater certainty, this Court orders that all of the Claims affecting or relating to the Property are hereby expunged and discharged as against the Property.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Titles Division of Toronto 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 for the Land Titles Division of Toronto (No. 80) is hereby directed to enter the Purchasers, or as they may direct, as the owners of the Property known as 83 Lyndhurst Avenue, Toronto, Ontario and legally described in Schedule "B" hereto, together with all buildings thereon, improvements and chattels situate therein

(collectively, the "**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 this Order may be registered on title to the Property, separately from the Application for Vesting Order, by way of an Application to Register Court Order or an Application to Amend Based on Court Order, if required by the Land Registrar.

6. **THIS COURT ORDERS** that this Order, and any related Application, Notice or other registration, shall be deleted from title to the Property at such time as the Property is transferred by the Purchases to a third party without further application to this Honourable Court, and that the Land Registrar for the Land Titles Division of Toronto (No. 80) is hereby authorized to delete this Order and any related Application, Notice or other registration from title to the Property.

7. **THIS COURT ORDERS** that until the delivery of the Receiver's Certificate to the Purchasers, or such other person as the Purchasers may direct, all parties on the Service List are hereby estopped from registering 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, as against the Property.

8. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.

9. **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 Respondents and any bankruptcy order issued pursuant to any such applications or otherwise; and
- (c) any assignment in bankruptcy made in respect of the Respondents;

the vesting of the Property in the Purchasers under this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Respondents and shall not be void or voidable by creditors of the Respondents, 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 legislation.

10. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.



SCHEDULE "A"

Court File No. CV-20-00640633-00CL

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RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated June 19, 2020, Zeifman Partners Inc. was appointed as the receiver (the "**Receiver**") of the property known as 83 Lyndhurst Avenue, Toronto, Ontario (the "**Property**").

B. Pursuant to an Order of the Court dated ►, the Court approved the agreement of purchase and sale dated September 21, 2020 and amended on November 16, 2020 (the "**Sale Agreement**") between the Receiver and Patricia Armstrong and David Armstrong (the "**Purchasers**") and provided for the vesting in the Purchasers, or such persons as they may direct, the right, title and interest in and to the Property, which vesting is to be effective with respect to the Property upon the

delivery by the Receiver to the Purchasers, or such persons as they may direct, of a certificate confirming (i) the payment by the Purchasers, or such persons as they may direct, of the purchase price for the Property; (ii) that the conditions to closing the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers, or such persons as they may direct; 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 Purchasers, or such persons as they may direct, have paid and the Receiver has received the purchase price for the Property 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 Purchasers, or such persons as they may direct; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at ► on ►.

ZEIFMAN PARTNERS INC., in its capacity as Receiver of the property known as 83 Lyndhurst Avenue, Toronto, Ontario, and not in its personal capacity

Per:

Name: Allan Rutman
Title: President

SCHEDULE "B"

PIN	21223-0083 (LT)
Description	PT LT 3 PL 1282 WYCHWOOD BRACONDALE DOVERCOURT AS IN WA98349; CITY OF TORONTO
Address	83 Lyndhurst Avenue Toronto, Ontario

SCHEDULE "C"

Charges

Interest	Registration Number	Party To	Party From	Amount Owning (as registered on title to the Property)
Mortgage/Charge	AT4664398	Hillmount Capital Inc.	Celine Brittany Pizale	\$3,100,000.00
Mortgage/Charge	AT5108990	1713691 Ontario Inc. and Boris Nodel	Celine Brittany Pizale	\$800,000.00
Postponement	AT5108991	1713691 Ontario Inc. and Boris Nodel	Harold Wine, Gad Caro and Marshall Morris	
Postponement	AT5108992	1713691 Ontario Inc. and Boris Nodel	Weihao Zhang	
Notice of Assignment of Rents (General)	AT4664400	Harold Wine, Gad Caro and Marshall Morris	Celine Brittany Pizale	
Mortgage/Charge	AT4664399	Harold Wine, Gad Caro and Marshall Morris	Celine Brittany Pizale	\$569,359.00
Notice	AT5114137	Harold Wine, Gad Caro and Marshall Morris	Celine Brittany Pizale	\$2.00
Mortgage/Charge	AT4871592	Weihao Zhang	Celine Brittany Pizale	\$325,000.00
Construction Lien	AT5162583		Leal Rental Centre Inc.	\$60,581.00
Certificate	AT5211194	Celine Brittany Pizale, Richard Pizale, Hillmount Capital Inc., Harold Wine, Gad Caro, Marshall Morris, 1713691 Ontario Inc., Borris Nodel and Weihao Zhang	Leal Rental Centre Inc.	
Construction Lien	AT5388082		Mallion Aluminium Inc.	\$2,271.00

Interest	Registration Number	Party To	Party From	Amount Owing (as registered on title to the Property)
Certificate	AT5443250	Celine Brittany Pizale and Richard Pizale	Mallion Aluminium Inc.	
Application for Court Order	AT5456480	Zeifman Partners Inc.	Ontario Superior Court of Justice	
Mortgage/Charge	AT5564348	Elle Mortgage Corporation	Celine Brittany Pizale and Justice Pizale	\$3,800,000.00
Transfer of Charge	AT5587345	Elle Mortgage Corporation	Hillmount Capital Inc.	

SCHEDULE "D"

Registered Executions

Execution Number	Execution Date	Debtor	Creditor	Judgment Amounts
19-0003646	July 22, 2019	Richard Pizale and Celine Pizale	2029629 Ontario Inc.	\$7,500 and \$184.00
20-0001177	January 30, 2020	Richard Pizale and Celine Brittany Pizale	Staltari Mechanical Inc.	\$18,780.76 and \$2,2125.00

PPSA Registrations

File Number	Registration Number	Debtor	Creditor
731113461	20170822122618622639	Celine B Pizale	Hillmount Capital Inc.
731113461	20190820173115903506	Celine B Pizale	Hillmount Capital Inc.

HILLMOUNT CAPITAL INC.
Applicant

-and- CELINE BRITTANY PIZALE et al.
Respondents

Court File No. CV-20-00640633-00CL

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PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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