

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

THE HONOURABLE MR. )  
 )  
JUSTICE KOEHNEN ) TUESDAY, THE 27<sup>th</sup> DAY  
 ) OF JULY, 2021

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 agreement of purchase and sale between Zeifman, in its capacity as the Liquidator of DBG, and Ron Aujla In Trust for a Corporation to be incorporated (“**Aujla**”), dated February 5, 2021, as amended (the “**APS**”) in respect of 333 Fairhill Avenue, Brampton, Ontario (“**333 Fairhill**”), and approving the transaction contemplated therein (the “**Transaction**”) contemplated by the APS, an unredacted copy of which is attached as Confidential Appendix 1 to the Sixth Report of the Liquidator dated June 28, 2021 (the “**Sixth Report**”), and vesting in Aujla’s designated

corporation, Fairhill Plaza Inc. (the “**Purchaser**”) all of the right, title and interest of the Liquidator and DBG in and to the Purchased Assets (as defined in the APS), was heard this day via ZOOM videoconference as a result of the COVID-19 pandemic.

**ON READING** the Sixth Report and the appendices thereto, the Supplement to the Sixth Report, the Affidavits of Ray Di Battista affirmed July 16, 20 and 26, and the transcript of the cross examination of Ray Di Battista on his Affidavits affirmed July 16 and 20, 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 Edmond Lamek sworn July 14, 2021, 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 APS 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 APS, 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 through 5 to the Sixth 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.

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

  
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**SCHEDULE “A”**

**FORM OF LIQUIDATOR’S CERTIFICATE**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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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 July 27, 2021, the Court approved the agreement of purchase and sale between Zeifman, in its capacity as the Liquidator of DBG, and in its capacity as the Liquidator of DBG, and Ron Aujla In Trust for a Corporation to be incorporated (“**Aujla**”), dated February 5, 2021, (the “**APS**”) , and provided for the vesting in Aujla’s designated corporation, Fairhill Plaza Inc. (the “**Purchaser**”) of all the Liquidator’s and DBG’s right, title and interest in and to the Purchased Assets (as defined in the APS).

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

**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 APS.
2. The conditions to closing as set out in the APS have been satisfied or waived by the Liquidator and Aujla on behalf of 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.

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Name:  
Title:

**SCHEDULE "B"**

**LEGAL DESCRIPTION OF REAL PROPERTY**

BLOCK 304, PLAN 43M1492; S/T EASE IN FAVOUR OF BELL CANADA OVER PT BLK 304, PL 43M1492 DES PT 1, 43R25827 AS IN PR169892; BRAMPTON

Being all of PIN 14254-2969 (LT)

**Municipal Address: 333 Fairhill Avenue, Brampton 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. The Leases and Contracts as defined in the APS.
12. Instrument No. PR164458 being a Plan Documents registered on 2001/11/08.
13. Instrument No. PR169888 being a Notice Agreement in favour of the Corporation of the City of Brampton and The Regional Municipality of Peel registered on 2001/11/23.

14. Instrument No. PR169892 being a Transfer Easement in favour of Bell Canada registered on 2001/11/08.
15. Instrument No. PR169888 being a Notice in favour of the Corporation of the City of Brampton registered on 2003/04/29.
16. Instrument No. PR601148 being a Notice in favour of the Corporation of the City of Brampton registered on 2004/03/05.
17. Instrument No. PR640135 being a Notice in favour of the Corporation of the City of Brampton registered on 2004/05/18.

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- and -

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**Applicant**

**Respondents**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**ORDER JULY 27, 2021  
(Approval and Vesting Order)**

**DLA PIPER (CANADA) LLP**  
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**Lawyers for Zeifman Partners Inc., in its capacity as the Liquidator of Di Battista  
Gambin Developments Limited and Whitwood Developments Ltd.**