

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

THE HONOURABLE)	TUESDAY, THE 9TH
)	
JUSTICE PENNY)	DAY OF MAY, 2023

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

(3406-3434 WESTON ROAD, NORTH YORK)

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*:

- (i) approving the sale transaction (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale dated October 27, 2022 between the Liquidator and Meloco Inc. (the “**Original Purchaser**”), as amended by an Amendment to Agreement of Purchase and Sale of December 16, 2022 between the Liquidator and the Original

Purchaser, as assigned by the Original Purchaser to 2843353 Ontario Inc. (the “**Interim Purchaser**”) pursuant to an Assignment of Agreement of Purchase Sale of January 20, 2023, as further amended by an Agreement to Amend of January 31, 2023 between the Liquidator and the Interim Purchaser, as further amended by a Third Agreement to Amend of February 6, 2023 between the Liquidator and the Interim Purchaser, as further amended and assigned from the Interim Purchaser to 3406-3434 Weston Road GP Inc., (the “**Purchaser**”) pursuant to an Assignment, Waiver and Amending Agreement of March 31, 2023 among the Liquidator, the Interim Purchaser and the Purchaser (collectively, the “**Sale Agreement**”), a redacted copy of which is attached as Appendix D to the Ninth Report of the Liquidator dated May 2, 2023 (the “**Ninth Report**”), and an unredacted copy of which is attached as Confidential Appendix 1 to the Ninth Report; and

- (ii) 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 paragraph 3 below),

was heard this day via ZOOM videoconference as a result of the COVID-19 pandemic.

ON READING the Ninth 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 May 3, 2023, 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 (as defined in paragraph 3 below) 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 (as defined below), including without limitation the subject real property identified in Schedule "B" hereto (the "**Real Property**" and together with the chattels and fixtures referenced in the Sale Agreement, collectively, the "**Purchased Assets**"), 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, 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 and registered against title to the Real Property on March 14, 2019 as Instrument No. AT5094917; (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" hereto) 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 Toronto (#66) 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 the 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 DBG and any bankruptcy order issued pursuant to any such applications; and
- (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 the Confidential Appendices to the Ninth Report shall be sealed and not form part of the public record until such time as the Liquidator's Certificate is filed with the Court in accordance with paragraph 6 of this Order.

GENERAL

9. **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 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 blue ink, appearing to read "Perry J.", is written over a horizontal line.

SCHEDULE “A”

FORM OF LIQUIDATOR’S CERTIFICATE

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

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APPLICATION UNDER Sections 207 and 248 of the Ontario *Business Corporations Act*,
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LIQUIDATOR’S CERTIFICATE

(3406-3434 WESTON ROAD, NORTH YORK)

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 May 9, 2023, (the “**Approval Order**”) the Court approved (a) the Agreement of Purchase and Sale dated October 27, 2022 between the Liquidator

and Meloco Inc. (the “**Original Purchaser**”), as amended by an Amendment to Agreement of Purchase and Sale of December 16, 2022 between the Liquidator and the Original Purchaser, as assigned by the Original Purchaser to 2843353 Ontario Inc. (the “**Interim Purchaser**”) pursuant to an Assignment of Agreement of Purchase Sale of January 20, 2023, as further amended by an Agreement to Amend of January 31, 2023 between the Liquidator and the Interim Purchaser, as further amended by a Third Agreement to Amend of February 6, 2023 between the Liquidator and the Interim Purchaser, as further amended and assigned from the Interim Purchaser to 3406-3434 Weston Road GP Inc., (the “**Purchaser**”) pursuant to an Assignment, Waiver and Amending Agreement of March 31, 2023 among the Liquidator, the Interim Purchaser and the Purchaser (collectively, the “**Sale Agreement**”), and (b) 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 Approval Order).

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

PT LT 20 CON 6 WYS TWP OF YORK AS IN TR56199, S/T NY679301, NY643883, T/W
NY635525, TR56199, TORONTO (N YORK), CITY OF TORONTO

PIN: 10309-0752 (LT)

Municipally known as 3406-3434 Weston Road, North York, Ontario

SCHEDULE “C”

INSTRUMENTS/ENCUMBRANCES TO BE DELETED

1. Application to Register Court Order registered on March 14, 2019 as Instrument No. AT5094917

SCHEDULE “D”

PERMITTED ENCUMBRANCES

GENERAL

1. Encumbrances for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Real Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for as between the parties.
2. Inchoate or undetermined liens that have not been registered against title to the Real Property and of which notice in writing has not been given to the Liquidator in respect of amounts the payment of which is not yet due and owing.
3. Any subsisting reservations, limitation, provisos, conditions or exceptions, including royalties, contained in any original grant of the Real Property from the Crown that do not materially impair the use, operation or marketability of the Real Property.
4. The provisions of applicable laws including by-laws, regulations, ordinances and similar instruments, relating to development and zoning.
5. Any registered licenses, easements, registered rights of way, as well as registered rights in the nature of easements and agreements with respect thereto which relate to the provision of utilities or services to the Real Property, including without limitation agreements, easements, licenses, rights of way and interests in the nature of easements for sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephonic and telegraphic conduits, poles, wires and cables.
6. Any encroachments depicted on the survey of the Real Property dated July 4, 2005.
7. All open building permits, files, notices or directives, work orders, notices of violation and other matter of non-compliance applied for, or made against, any tenant of the Real Property.

SPECIFIC

8. Any Notice of Lease affecting the Real Property, provided same is/are consistent with the Leases to be assumed by the Purchaser, if any.
9. Instrument NY632268 being a Notice re Airport Zoning Regulation in favour of Department of Transportation registered on 1973/01/29.
10. Instrument NY643883, being a Transfer of Easement registered on 1973/07/31.
11. Instrument NY679301 being a Transfer of Easement in favour of The Consumers' Gas Company Inc. registered on 1975/05/13.
12. Instrument TR57844 being a Notice re Pearson Airport Zoning Regulation in favour of Her Majesty the Queen in Right of The Department of Transport Canada registered on 2000/03/27.

13. Instrument AT788853 being a Land Registrar's Order (Amending Legal Description) registered on 2005/04/29.
14. Instrument AT795396 being a Land Registrar's Order registered on 2005/05/05.
15. Instrument AT4048205 being a Notice in favour of the City of Toronto registered on 2015/10/27.

