

Court File No. CV-23-00701806-00CL

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

THE HONOURABLE)	WEDNESDAY, THE 29 th
)	
JUSTICE CONWAY)	DAY OF NOVEMBER, 2023
)	

BETWEEN:

TOBIAS IHDE

Applicant

- and -

DAMIVA INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by Zeifman Partners Inc., in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, or all of the undertaking, property and assets of Damiva Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, for an order, *inter alia*, (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and 1000657239 Ontario Limited (the “**Purchaser**”), as purchaser, dated October 16, 2023, together with the schedules thereto (the “**Purchase Agreement**”), a copy of which is attached as Confidential Appendix “C” to the Report of the Receiver dated November 13, 2023 (the “**Report**”); and (ii) vesting in the Purchaser the Debtor’s right, title and interest in and to the property described as the Purchased Assets in the Purchase Agreement (the “**Purchased Assets**”) was heard this day via videoconference.

ON READING the Motion Record of the Receiver and the Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, and such other as were present, and no

one else appearing for any other person, although properly served as appears from the affidavit of service of Christine Doyle, as filed.

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms used herein that are otherwise not defined shall have the meaning ascribed to them in the Purchase Agreement.

APPROVAL AND VESTING

2. **THIS COURT ORDERS** that the Purchase Agreement and the Transaction be and are hereby approved and that the execution of the Purchase 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 Purchased Assets to the Purchaser, or as it may direct.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Purchase Agreement 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, 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 Justice Koehnen made June 30, 2023; and (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, for greater certainty, this Court orders that all of the Claims affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **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 Receiver's Certificate all Claims 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.

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

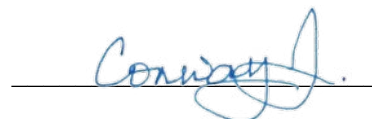
6. **THIS COURT ORDERS** that, notwithstanding (a) the pendency of these proceedings; (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and (c) any assignment in bankruptcy made in respect of the Debtor, the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, 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.

GENERAL

7. **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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

Schedule “A” – Form of Receiver’s Certificate

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- and -

DAMIVA INC.

Respondent

RECEIVER’S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (the “**Court**”) dated June 30, 2023, Zeifman Partners Inc. was appointed as the receiver (the “**Receiver**”), without security, of the undertaking, property and assets of Damiva Inc. (the “**Debtor**”), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof.

B. Pursuant to an Order of the Court dated November 29, 2023, the Court approved the agreement of purchase and sale (the “**Purchase Agreement**”) by and between the Receiver, as vendor, and 1000657239 Ontario Limited (the “**Purchaser**”), as purchaser, dated October 16, 2023 (the “**Transaction**”) which provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets (as defined therein), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser (or their respective counsel) of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Purchase Agreement have been

satisfied or waived by the Receiver and the Purchaser, as applicable; 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 Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Purchase Agreement;
2. The conditions to closing under the Purchase Agreement have been satisfied and/or waived by the Receiver and the Purchaser, as applicable;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

ZEIFMAN PARTNERS INC., solely in its capacity as the Court-appointed Receiver of Damiva Inc., and not in its personal capacity or in any other capacity

By: _____
 Name:
 Title:

TOBIAS IHDE
Applicant

-and-

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DAMIVA INC.
Respondent

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(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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