

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BEFORE THE HONOURABLE)

) **Wednesday, the 5th day of August, 2020**

MR. JUSTICE KOEHNEN)

B E T W E E N:

FIRSTONTARIO CREDIT UNION LIMITED

Applicant

-and-

1393382 ONTARIO LIMITED

Respondent

APPLICATION UNDER Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

APPROVAL AND VESTING ORDER

THIS MOTION, made by msi Spergel Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of 1393382 Ontario Limited (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an

agreement of purchase and sale (the "Sale Agreement") between the Receiver and K2 Group Inc. (the "Purchaser") dated July 3, 2020 and appended to the Second Report of the Receiver dated July 22, 2020 (the "Report"), and vesting in the Purchaser or its permitted assignee the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day via Zoom conference at Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the applicant, the respondent, and Canadian Imperial Bank of Commerce, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Simon Grey sworn July 24, 2020, filed:

1. 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 Purchased Assets to the Purchaser's permitted assignee 2765459 Ontario Inc..

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser's permitted assignee 2765459 Ontario Inc. 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 Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser's permitted assignee, 2765459 Ontario Inc., 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 Orders of the Honourable Justice Hainey dated September 30, 2019 in Court File Number CV-19-00628293-00CL and December 16 and 18, 2019 in this proceeding; (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 that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Kent (No. 24) 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's permitted assignee 2765459 Ontario Inc. as the owner of the subject real property identified in Schedule B hereto (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.

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 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.

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) 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's permitted assignee 2765459 Ontario Inc. 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 *Bankruptcy and Insolvency Act* (Canada) 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.

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.



Schedule A – Form of Receiver’s Certificate

Court File No. **CV-19-00632077-00CL**

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B E T W E E N:

FIRSTONTARIO CREDIT UNION LIMITED

Applicant

-and-

1393382 ONTARIO LIMITED

Respondent

APPLICATION UNDER Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to Orders of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "Court") dated December 16 and 18, 2019, msi Spergel Inc. was appointed as the receiver (the "Receiver") of certain undertaking, property and assets of 1393382 Ontario Limited (the "Debtor").

B. Pursuant to an Order of the Court dated August 5, 2020, the Court approved the agreement of purchase and sale made as of July 3, 2020 (the "Sale Agreement") between the Receiver and K2 Group Inc. (the "Purchaser") and provided for the vesting in the Purchaser's permitted assignee 2765459 Ontario Inc. of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser's permitted assignee 2765459 Ontario Inc. of a certificate confirming (i) the payment by the Purchaser's permitted assignee 2765459 Ontario Inc. of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 15 and 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser's permitted assignee 2765459 Ontario Inc.; 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 Purchaser's permitted assignee 2765459 Ontario Inc. has paid and the Receiver 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 sections 15 and 16 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser's permitted assignee 2765459 Ontario Inc.; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**msi Spergel Inc., in its capacity as Receiver of
the undertaking, property and assets of
1393382 Ontario Limited, and not in its
personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

a) Real Property

PT LT 18, CON A, RALEIGH, AS IN 477708, TOGETHER WITH EASEMENT
AS IN CK32321 OVER PART OF LOT 18, CON. A, RALEIGH, DESIGNATED AS
PART 1, 24R8539 ; CHATHAM KENT
(PIN: 00877-0040(LT))

b) Personal Property

Retail Counters

Restaurant Equipment

Kubota Tractor

Storage Trailer

Schedule C – Claims to be deleted and expunged from title to Real Property

Instrument No.	Date	Instrument Type	Parties To
CK129070	2017/03/02	Charge	FirstOntario Credit Union Limited
CK129071	2017/03/02	No Assgn Rent Gen	FirstOntario Credit Union Limited
CK154953	2019/02/13	Notice	FirstOntario Credit Union Limited
CK164261	2019/10/01	Apl Court Order	BDO Canada Limited
CK165744	2019/11/04	Restrictions Order	Canadian Imperial Bank of Commerce
CK167835	2019/12/20	Apl Court Order	msi Spergel Inc.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Any undetermined or inchoate liens and charges incidental to the Purchased Assets.
2. The Leases (as defined in the Sale Agreement).
3. The reservations, limitations, provisos, conditions, restrictions and exceptions expressed in the letters patent or grant from the Crown and all statutory exceptions to title;
4. The provisions of governing municipal by-laws;
5. Municipal taxes, liens, charges, including hydro and water charges, rates and assessments accruing from day to day and not yet due and payable;
6. Any defects or minor encroachments which might be revealed by an up to date survey of the Real Property;
7. Any right of expropriation conferred upon, reserved to or vesting in Her Majesty the Queen in Right of Canada and Ontario;
8. Any registered restrictions or covenants that run with the Real Property provided that same have been complied with in all material respects;
9. Any easements, rights of way or right of re-entry in favour of a developer, not materially or adversely impairing the present use of the Real Property;
10. Any agreements with municipal, utilities or public authorities provided that same have been complied with in all material respects;
11. The following instruments registered on title to the Real Property in the Land Registry Office:

Registration Number	Date	Instrument Type
24R2364	1979/09/18	PLAN REFERENCE
CK32760	2009/01/09	NOTICE

FIRSTONTARIO CREDIT UNION LIMITED
Applicant

-and-

1393382 ONTARIO LIMITED
Respondent
Court File No. CV-19-00632007-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

FLETT BECCARIO

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Welland ON L3B 5P9

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Lawyers for the Court-Appointed Receiver, msi Spergel Inc.