



Court File No. CV-22-00678808-00CL

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

THE HONOURABLE)
JUSTICE PENNY)
FRIDAY, THE 12th
DAY OF MAY, 2023

B E T W E E N:

CANADIAN EQUIPMENT FINANCE AND LEASING INC.

Applicant

- and -

**THE HYPOINT COMPANY LIMITED, 2618905 ONTARIO LIMITED, 2618909
ONTARIO LIMITED, BEVERLEY ROCKLIFFE, and CHANTAL BOCK**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by **msi SPERGEL INC.**, in its capacity as the Court-appointed receiver (the “**Receiver**”) without security, of the undertaking, property and assets of the Hypoint Company Limited and 2618909 Ontario Limited (collectively, the “**Debtors**”) for an order, *inter alia*,: (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Purchase Agreement**”) dated April 14, 2023 between the Receiver and Giampaolo Investments Limited (the “**Original Purchaser**”), as assigned by the Original Purchaser to GIL Brantford Inc. (the “**Purchaser**”), and appended as Appendix “E” and Confidential Appendix “J” to the First Report of the Receiver dated May 5, 2023 (the “**First Report**”); (ii) vesting in the Purchaser, the Debtors’ right, title and interest in and to the assets and property described in the Purchase Agreement (the “**Purchased Assets**”); and (iii) approving

the First Report and the activities of the Receiver as described therein, was heard today by video conference.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, counsel for the Purchaser and any other parties appearing listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Shaun Parsons sworn May 8, 2023 filed:

SERVICE

1. **THIS COURT ORDERS** that the time and method for service 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 TRANSACTION

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, the implementation and process of the Receiver of the sale process is hereby approved, and 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.

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 Debtors' right, title and interest in and to the Purchased Assets described in the Purchase Agreement and listed on **Schedule "B"** hereto 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 Osborne dated October 28, 2022; (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, 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.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Brant (#2) 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 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.

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 (the “**Net Proceeds**”) 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.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’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) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

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 Debtors and shall not be void or voidable by creditors of the Debtors, 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.

GENERAL

8. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.

9. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction to give effect to this Order and to assist the Purchaser, the Receiver and their respective 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 the Debtors, the Purchaser, and the Receiver, as an officer of this Court, as may be necessary or desirable to recognize and give effect to this Order and to assist the Purchaser, the Receiver and their respective agents in carrying out the terms of this Order.



Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-21-00661434-00CL

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B E T W E E N:

CANADIAN EQUIPMENT FINANCE AND LEASING INC.

Applicant

- and -

**THE HYPOINT COMPANY LIMITED, 2618905 ONTARIO LIMITED, 2618909
ONTARIO LIMITED, BEVERLEY ROCKLIFFE, and CHANTAL BOCK**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Osborne of the Ontario Superior Court of Justice (the “**Court**”) dated October 28, 2022, msi Spergel inc. was appointed as the receiver and receiver and manager (the “**Receiver**”) of the undertaking, property and assets of the Hypoint Company Limited and 2618909 Ontario Limited (collectively, the “**Debtors**”).

B. Pursuant to an Order of the Court dated May ● 2023, the Court approved the agreement of purchase and sale attached as Appendix “E” and Confidential Appendix “J” to the First Report of the Receiver dated April 14, 2023 (the “**Purchase Agreement**”) between the Receiver and Giampaolo Investments Limited (the “**Original Purchaser**”), as assigned by the Original Purchaser to GIL Brantford Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ 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 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; 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 as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; 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., solely in its capacity as
Receiver of the Property, and not in its
personal capacity**

Per: _____

Name:

Title:

Schedule “B” – The Purchased Assets

Legal Description of the Real Property

PIN 32281-0038 (LT)

LT 39 PL 1455 BRANTFORD CITY

Municipal Address of the Real Property

59 Roy Blvd., Brantford, Ontario

And all fixtures attached thereto and all chattels located thereon.

Schedule “C” – Claims to be deleted and expunged

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
BC277561	2015/07/13	LR’s Order		Land Registrar, Brant Land Registry Office	
BC380708	2020/06/05	Charge	\$4,000,000	2618909 Ontario Limited	Delrin Investments Inc.; Stern, Samuel; Kessler, Harvey; Goldberg, Richard
BC381289	2020/06/18	Charge	\$1,300,000	2618909 Ontario Limited	Lubelsky, Bruce
BC381290	2020/06/18	Postponement		Delrin Investments Inc.; Stern, Samuel; Kessler, Harvey; Goldberg, Richard	Lubelsky, Bruce
BC381472	2020/06/23	No Sec Interest	\$779,070	Canadian Equipment Finance & Leasing Inc.	
BC423662	2022/02/14	Charge	\$70,000	2618909 Ontario Limited	2767888 Ontario Inc.
BC426306	2022/03/21	Notice	\$1	2618909 Ontario Limited	2767888 Ontario Inc.
BC444167	2022/11/18	APL Court Order		Ontario Superior Court of Justice (Commercial List)	Msi Spergel Inc.

Schedule “D” – Permitted Claims

Any undetermined or inchoate liens and charges incidental to the Purchased Assets, in each case not yet due or in arrears;

The reservations, limitations, provisos, conditions, restrictions and exceptions expressed in the letters patent or grant from the Crown and all statutory exceptions to title;

The provisions of governing municipal by-laws;

Municipal taxes, liens, charges, including hydro and water charges, rates and assessments accruing from day to day and not yet due and payable;

Any minor encroachments which might be revealed by an up to date survey of the Lands;

Any right of expropriation conferred upon, reserved to or vesting in His Majesty the King in Right of Canada and Ontario;

Any registered restrictions or covenants that run with the Lands provided that same have been complied with in all material respects;

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 Lands;

Any agreements with municipal, utilities or public authorities provided that same have been complied with in all material respects;

The following instrument registered on title to the Lands in the Brant (#2) Land Registry Office:

Reg. No.	Date	Instrument Type	Parties From	Parties To
BC334349	2018/02/28	TRANSFER	TOMLINSON SYSTEMS INC.	2618909 ONTARIO LIMITED

**CANADIAN EQUIPMENT FINANCE AND
LEASING INC.**

and

THE HYPPOINT COMPANY LIMITED et al.

Applicant

Respondents

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

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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**Lawyers for the Receiver, msi Spergel, in its
capacity as the court appointed Receiver of
The Hypoint Company Limited and 2618909
Ontario Limited.**