

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE *HAINES*)
)

WEDNESDAY, THE 16TH
DAY OF MAY, 2018



BETWEEN:

BANK OF MONTREAL

Applicant

- and -

AL-CHERAGH INTERNATIONAL CORPORATION,
6413340 CANADA INC and 7149816 CANADA INC.

Respondents

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended and Section 101 of the *Courts of Justice Act*,
R.S.O. 1990, c. c-43, as amended

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 Al-Cheragh International Corporation, 6413340 Canada Inc. and 7149816 Canada Inc. (the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Noorallah Nawrozada and Alex Scholyar, in trust for 2633720 Ontario Inc. (the "Purchaser") dated April 17, 2018 and appended to the Report of the Receiver dated May 4, 2018 (the "Report"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Julie Franchini sworn May 4, 2018 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.

2. 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 Sale 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 Hainey dated February 1, 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 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 Simcoe (#51) 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.

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 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.

7. THIS COURT ORDERS that the Confidential Appendices to the Report shall be sealed until the earlier of a) the completion of the Transaction, and b) further order of this Court.

8. 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

Schedule A – Form of Receiver’s Certificate

Court File No. CV-18-590085-00CL

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Haaney of the Ontario Superior Court of Justice (the "Court") dated February 1, 2018, msi Spergel Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Al-Cheragh International Corporation, 6413340 Canada Inc. and 7149816 Canada Inc. (the "Debtors").

B. Pursuant to an Order of the Court dated May 16, 2018, the Court approved the agreement of purchase and sale made as of April 17, 2018 (the "Sale Agreement") between the Receiver and Noorallah Nawrozada and Alex Scholyar, in trust for 2633720 Ontario 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 sections 11 and 12 of the Sale 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 Sale 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 Sale Agreement;
2. The conditions to Closing as set out in sections 11 and 12 of the Sale 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, in its capacity as Receiver
of the assets, undertakings and properties of
AL-CHERAGH INTERNATIONAL
CORPORATION, 6413340 CANADA INC. AND
7149816 CANADA INC., and not in its
personal capacity**

Per: _____

Name: Deborah Hornbostel

Title: Senior Principal

Schedule B – Purchased Assets

1. The real property legally described as PT LT A CON 2 EPR ORO PTS 1 & 2, 51R6107; ORO-MEDONTE (PIN 58552-0076 in LRO #51) together with all buildings and improvements thereon (“Real Property”);
2. The right, title and interest, if any, of the Debtors in all leases or agreements to lease (collectively, “Leases”) in respect of the Real Property, or any portion thereof, including, without limitation, the following leases:
 - (a) Lease dated April 26, 2015 between Al-Cheragh International Corporation and Rocket Fireworks Inc.; and
 - (b) Lease dated January 28, 2008 between Al-Cheragh International Corporation and PCO Services Corporation.
3. The right, title and interest, if any, of the Debtors in all benefits, advantages, licences, guarantees, warranties, income, rents and options relating to the Real Property; and
4. The personal property described on Schedule B1.

Schedule B1 – Personal Property

QTY.	PIC	DESCRIPTION	MODEL	S/N
1	1	QBD , TWO DOOR, REFRIGERATED MERCHANDISER	CD45S	N/A
15	2-5	WOOD CHAIR	N/A	N/A
5	2-5	RECTANGULAR TABLE	N/A	N/A
1	6	TRUE , GLASS DOOR, REFRIGERATED MERCHANDISER	GDM-10	N/A
1	7	SINGLE BASIN, STAINLESS STEEL, SINK	N/A	N/A
1	8	DUAL BASIN, STAINLESS STEEL, WASH SINK	N/A	N/A
1	9	CURTIS , 6' X 18', WALK-IN COOLER / FREEZER	N/A	N/A
1	10	SINGLE BASIN, STAINLESS STEEL, WASH SINK	N/A	N/A
1	11	GARLAND , 24", STAINLESS STEEL, CHARBROILER	N/A	N/A
1	12	PREMIERE CHEST FREEZER	N/A	N/A
1	13	SINGLE BASIN, STAINLESS STEEL, WASH SINK	N/A	N/A
1	14	CURTIS , 3' X 6', WALK-IN COOLER	IJIC	9754
1	15	TRUE , SINGLE DOOR, REACH-IN REFRIGERATOR	T-19	5267481
1	16	CORNELIUS , 1000 SERIES, ICE MAKER	TAD1030	63M0040BC
1	17	TRIMEN VENT HOOD	N/A	N/A
1	18	GARLAND , 36", CHARR BROILER	N/A	N/A
1	19	GARLAND , 8', GRIDDLE	N/A	N/A
1	20	TRIMEN , 12' (APPROX.), STAINLESS STEEL, VENT HOOD WITH FIRE SUPPRESSION	N/A	N/A

QTY.	PIC	DESCRIPTION	MODEL	S/N
1	21	GARLAND WARMER	N/A	N/A
2	22-23	FRYMASTER , 40 LB, COMMERCIAL GAS FRYER	GF14SD	9606FM0361 0506FM0413
1	24	FRYMASTER , 40 LB, COMMERCIAL GAS FRYER	PMJ135SD	0608FA0011
1	25	SAVORY , STAINLESS STEEL, COMMERCIAL TOASTER	RT2VSH0	RT0017986
1	26	COMMERCIAL PREP TABLE, 6 DOOR	N/A	N/A
1	27	TAYLOR , 3 HEAD,SOFT SERVE ICE CREAM MACHINE	62-33	J9013636
1	28	QBD BAKERY DISPLAY CASE	CTD3560	HH05A083
1	29	KOOL-AIR REFRIGERATED DISPLAY CASE	N/A	2060048
1	30	AD WELDING , 2 DOOR, REFRIGERATED, PREP TABLE	FRUIT	997-15
1	31	REFRIGERATED, PREP TABLE, 3 DOOR	N/A	N/A
1	32	SERVEND , 6 HEAD, FOUNTAIN SODA MACHINE	N/A	N/A
1		LOT OF BENCHES, PLASTIC DISPLAY RACKS, WOODEN DISPLAY SHELVES, INVENTORY - NON FOOD ITEMS, CASH REGISTER, STAINLESS STEEL SINKS, MICROWAVES, COOLERS AND PREP TABLES NOT OTHERWISE LISTED, STAINLESS STEEL STRAINERS, PANS, BAKING RACKS, ASSORTED KITCHEN EQUIPMENT, POS SYSTEM, MENU LCDS, CONTENTS OF STORAGE ROOM, COMPUTERS, HIGHCHAIRS, TELEVISIONS, LOTTO MACHINE ETC.	N/A	N/A

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

1. Charge registered as No. SC899724 on May 5, 2011 to Bank of Montreal in the amount of \$1,725,000;
2. Notice of Assignment of Rents registered as No. SC899725 on May 5, 2011 by Bank of Montreal;
3. Notice of security interest registered as No. SC1180060 on December 4, 2014 by SNAP Commercial Financial Corp.;
4. Lien registered as No. SC1362455 on November 17, 2016 by Her Majesty the Queen in Right of Canada as Represented by The Minister of National Revenue; and
5. Application Court Order registered as No. SC1502966 on April 10, 2018 by 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 on Schedule B;
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; and
10. Any agreements with municipal, utilities or public authorities provided that same have been complied with in all material respects.

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CORPORATION, et al.
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Court File No: CV-18-590085-00CL

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

Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER

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Inc. and 7149816 Canada Inc.