

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	WEDNESDAY, THE 21 ST
)	
JUSTICE MCEWEN)	DAY OF OCTOBER, 2020

B E T W E E N:

MERIDIAN CREDIT UNION LIMITED

Applicant

- and -

2561534 ONTARIO LIMITED

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by msi Spergel Inc., in its capacity as the Court-appointed receiver (the "**Receiver**" or "**Spergel**") of the undertakings, property and assets of 2561534 Ontario Limited (the "**Debtor**") for an order:

1. if necessary, abridging the time for and manner of service of the Notice of Motion, the First Report of the Receiver dated October 8, 2020 (the "**First Report**"), and the Motion Record herein and directing any further service of this Notice of Motion, First Report and Motion Record be dispensed with such that this motion is properly returnable on Wednesday, October 21, 2020;
2. approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver

and GWL Realty Advisors Inc. and subsequently assigned to The Canada Life Assurance Company (the "**Purchaser**") dated August 6, 2020, and appended to the First Report, and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**");

3. sealing the Confidential Appendices 1 through 4 to the First Report until the earlier of the completion of the Transaction or further Order of this Honourable Court;
4. approving the activities of the Receiver as set out in the First Report;
5. approving the Receiver's Interim Statement of Receipts and Disbursements as at September 22, 2020;
6. for partial distribution of the net proceeds of realization of the Receiver from the Transaction, in accordance with paragraph 14 of this Order; and,
7. approving the fees and disbursements of the Receiver and its counsel,

was heard this day at 330 University Avenue, Toronto, Ontario, by video conference in accordance with the changes to the operation of the Commercial List and the Chief Justice's Notice to the Profession.

ON READING the Notice of Motion, the First Report and appendices thereto and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING]_____, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Tanisha Hinds sworn October 9, 2020 filed:

1. **THIS COURT ORDERS AND DECLARES** that any requirement for service of the Notice of Motion, the First Report and Motion Record be and is hereby abridged, that the Motion is properly returnable today and that all parties requiring notice of this Motion have been duly served and that service on all parties is hereby validated and any further service is hereby dispensed with.

2. **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.

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 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 December 16, 2019; (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.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Peel (No. 43) 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 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.

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 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 *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.

8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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 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.

10. **THIS COURT ORDERS** that the conduct, activities and actions of the Receiver, as set out in the First Report, are hereby approved.

11. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements as at September 22, 2020, as detailed in the First Report, are hereby approved.

12. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the First Report and the Fee Affidavits, are hereby approved and the Receiver is authorized to pay same.

13. **THIS COURT ORDERS** that the Confidential Appendices as defined in the First Report are hereby sealed until the completion of the Transaction or until further order of the Court.

14. **THIS COURT ORDERS** that after payment of the Receiver's Fees and its Counsel Fees herein approved and subject to the Receiver maintaining sufficient reserves to satisfy all charges as set out in the Appointment Order, the Receiver is hereby authorized to make a distribution to:

- (a) the Town of Caledon in the amount of \$75,329.27 or such other amount accrued at the closing of the Transaction for outstanding realty tax arrears;

- (b) Meridian Credit Union Limited with respect to the First Mortgage in the amount of \$6,445,702.46, which includes repayment of the Receiver Certificate No 1 in the amount of \$25,000 plus interest thereon in accordance with the Receiver's Certificate, plus a per diem amount of \$649.32 to the date of close of the Transaction.

15. **THIS COURT ORDERS** that any proceeds of the Transaction remaining after the distribution authorized in paragraph 14 shall be held by the Receiver pending a further order of this Court.

A handwritten signature in black ink, appearing to read 'McE... T.', is positioned above a horizontal line.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-19-00632075-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

MERIDIAN CREDIT UNION LIMITED

Applicant

- and –

2561534 ONTARIO LIMITED

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated December 16, 2019, msi Spergel Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of 2561534 Ontario Limited (the "**Debtor**").

B. Pursuant to an Order of the Court dated October 21, 2020, the Court approved the agreement of purchase and sale made as of August 6, 2020 (the "**Sale Agreement**") between the Receiver and GWL Realty Advisors Inc. and subsequently assigned to The Canada Life Assurance Company (the "**Purchaser**") and provided for the vesting in the Purchaser 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 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 12 and 13 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 12 and 13 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, undertaking and
property of 2561534 Ontario Limited ,
and not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

The land and premises municipally known as Abbotside Way, Caledon, Ontario, and legally described as:

PIN 14235-5806 (LT): PART LOT 18 CON 2 EHS (CHING) AND PART BLOCK 202
PLAN 43M1800 DESIGNATED AS PART 2 PLAN 43R37497; TOWN OF CALEDON

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

Instrument PR3457496 being a Charge in favour of Meridian Credit Union Limited

Instrument PR3457497 being a notice of Assignment of Rents in favour of Meridian Credit Union Limited

Instrument PR3565130 being an Order of Hainey J. dated October 7th, 2019

Instrument No. PR3597576 being an Order of Hainey J. appointing msi Spergel Inc. as Receiver of the assets of 2561534 Ontario Limited, registered on January 8, 2020

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

(unaffected by the Vesting Order)

1. any reservation or unregistered restrictions, rights of way, easements or covenants that run with the land;
2. any registered or unregistered agreements or easements with a municipality or a supplier of utility services including without limitation, electricity, water, sewage, gas, telephone or cable television or any other telecommunication service;
3. any laws, by-laws and regulations;
4. any minor easements for the supply of utility service to the land or adjacent lands;
5. any encroachments disclosed by any errors or omissions in existing surveys of the Real Property or neighbouring properties and any title defect, encroachment or breach of zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey or the Real Property and survey matters generally;
6. any exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
7. any reservation contained in the original grant from the Crown;
8. any Land Registrar's registered orders;
9. any deposited reference plans.

MERIDIAN CREDIT UNION LIMITED
Applicant

-and- 2561534 ONTARIO LIMITED
Respondent

Court File No. CV-19-00632075-00CL

21 Oct 20

The Approval and Vesting Order shall go as per the draft filed and signed.

It is unopposed. I have received the submissions of counsel.

I am satisfied the the marketing process was thorough and the sale price was the best available. Soundair principles have been met.

The remainder of the relief sought is fair and reasonable, including fees and activities.



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PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Lawyers for msi Spergel Inc., in its capacity as Receiver of all of the assets, undertakings and properties of 2561534 Ontario Limited