

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE HAINEY

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FRIDAY, THE 4TH
DAY OF SEPTEMBER, 2020

B E T W E E N:

THE BANK OF NOVA SCOTIA

Applicant

- and -

CINDERGIRLS INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by msi Spergel inc. ("**Spergel**") in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets, including the real property municipally known as 214 Ontario Street, Brighton, Ontario [PIN 51154-0553] (the "**Real Property**") of Cindergirls Inc. (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 Tomba Enterprises Ltd. (the "**Purchaser**") dated July 8, 2020 and appended to the First Report of the Receiver dated August 26, 2020 (the "**First Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the Real Property described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, the Mortgagor (as defined in the First Report) consenting, no one appearing

for any other person on the service list, although properly served as appears from the affidavits of Jeff Medeiros sworn August 31, 2020 and September 3, 2020, the affidavit of Rachel Moses sworn September 1, 2020 and the affidavit of Christine Cavarzan sworn September 1, 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.

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 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 Hailey dated February 12, 2020; (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 the Land Registry Office for Northumberland (No. 39) 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, Tomba Enterprises Ltd., 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 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 ORDERS AND DECLARES** that the Confidential Appendices to the First Report be and are hereby sealed and shall not form part of the public record until the closing of the Transaction.

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 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.

9. **THIS COURT ORDERS** that, this order is effective from today's date and is not required to be entered.

A handwritten signature in cursive script, reading "Hainey J.", is written over a horizontal line.

Schedule A – Form of Receiver's Certificate

Court File No. CV-20-00634214-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE BANK OF NOVA SCOTIA

Applicant

- and -

CINDERGIRLS INC.

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 February 12, 2020, msi Spergel inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Cindergirls Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated September 4, 2020, the Court approved the agreement of purchase and sale made as of July 8, 2020 (the "**Sale Agreement**") between the Receiver and Tomba Enterprises Ltd. (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 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 Real Property payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in 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 _____ 2020.

**msi Spergel inc., in its capacity as
Receiver of the undertaking, property
and assets of CINDERGIRLS INC., and
not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

(i) The Real Property, being the lands and premises municipally known as 214 Ontario Street, Brighton, Ontario legally described on PIN 51154-0553 (LT) as Part Lot 3 Con Broken Front Designated as Part 1 Plan 39R13426; Municipality of Brighton, in the Land Titles Division of the Land Registry Office for Northumberland (No. 39), together with all improvements erected thereon, and (ii) all existing chattels and equipment on the Real Property.

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

1. Instrument No. ND143083 registered on December 6, 2016 being the Bank of Nova Scotia charge from Cindergirls Inc.
2. Instrument No. ND182931 registered on June 19, 2019 being a tax lien in favour of Her Majesty the Queen in Right of Canada as Represented by the Minister of National Revenue
3. Instrument No. ND194241 registered on February 13, 2020 being the Application to Register Court Order appointing msi Spergel Inc. as Receiver

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

(unaffected by the Vesting Order)

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

FRIDAY, THE 4TH

JUSTICE HAINEY

)

DAY OF SEPTEMBER, 2020

)

B E T W E E N:

THE BANK OF NOVA SCOTIA

Applicant

- and -

CINDERGIRLS INC.

Respondent

DISCHARGE ORDER

THIS MOTION, made by msi Spergel inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets, including the real property municipally known as 214 Ontario Street, Brighton, Ontario [PIN 51154-0553] (the "**Real Property**") of Cindergirls Inc. (the "**Debtor**"), for an order:

1. approving the activities of the Receiver as set out in the report of the Receiver dated August 26, 2020 (the "**First Report**") and the supplementary report dated August 31, 2020 (the "**Supplementary Report**");
2. approving the fees and disbursements of the Receiver and its counsel, including their respective fee accruals;
3. approving the distribution of the remaining proceeds available in the estate of the Debtor; and

4. discharging msi Spergel Inc. as Receiver of the undertaking, property and assets of the Debtor,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Frist Report, the affidavits of the Receiver and its counsel as to fees (the "**Fee Affidavits**"), the Supplementary Report and on hearing the submissions of counsel for the Receiver, no one else appearing although served as evidenced by the Affidavits of Service of Jeff Medeiros sworn August 31, 2020 and September 3, 2020, the Affidavit of Service of Rachel Moses sworn September 1, 2020 and the Affidavit of Service of Christine Cavarzan sworn September 1, 2020, filed;

1. **THIS COURT ORDERS** that the First Report and the Supplementary Report, and the activities of the Receiver as set out in the First Report and the Supplementary Report, be and are hereby approved.

2. **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, including the fee accruals set out in the First Report.

3. **THIS COURT ORDERS** that the Receiver's interim statement of receipts and disbursements as described in the First Report be and is hereby approved.

4. **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to:

- (a) Municipality of Brighton for outstanding realty tax arrears;
- (b) Canada Revenue Agency in the amount of \$5,504.25 in respect of a deemed trust claim;
- (c) Bank of Nova Scotia for repayment of the Receiver Certificate Nos. 001, 002, 003 and 004 (collectively the "**Receiver's Certificates**")

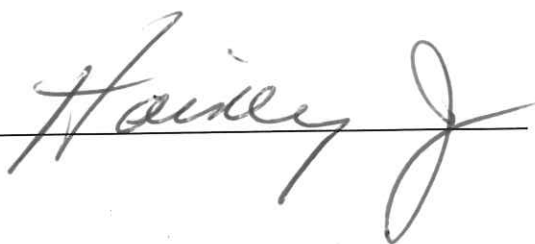
in the total amount of \$20,000.00 plus interest thereon in accordance with the Receiver's Certificates; and

(d) Bank of Nova Scotia to a maximum amount of \$416,869.72.

5. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraph 4 hereof and upon the Receiver filing a certificate certifying that it has completed the other activities described in the First Report and the Supplementary Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of msi Spergel inc. in its capacity as Receiver.

6. **THIS COURT ORDERS AND DECLARES** that msi Spergel inc. is hereby released and discharged from any and all liability that msi Spergel inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of msi Spergel inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, msi Spergel inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

7. **THIS COURT ORDERS** that, this order is effective from today's date and is not required to be entered.

A handwritten signature in cursive script, appearing to read "Hainey J.", is written over a horizontal line.

