

ONTARIO

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

THE HONOURABLE )  
JUSTICE *DUNPHY* )

WEDNESDAY, THE 16<sup>th</sup>  
DAY OF MAY, 2018

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

**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 2203824 Ontario 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 Hue Developments & Investments Canada Inc. (the "Purchaser") dated February 8, 2018 and appended to the First Report of the Receiver dated May 4, 2018 (the "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"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for The Guarantee Company of North America, counsel for Tarion Warranty

Corporation, and such others as appear on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Sara Mosadeq sworn May 4, 2018 filed,

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Motion, and the Supplementary Motion Record is hereby abridged, if necessary, and validated so that this motion is properly returnable today. Further service of the Notice of Motion, Motion Record, and Supplementary Motion Record 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 to complete the sale of the Purchased Assets. 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, including the lands legally described in Schedule B hereto (the "Real Property") 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"<sup>1</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Conway dated June 22, 2017; (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

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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 Wentworth 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 Real Property in fee simple..

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, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. THIS COURT ORDERS that, notwithstanding:

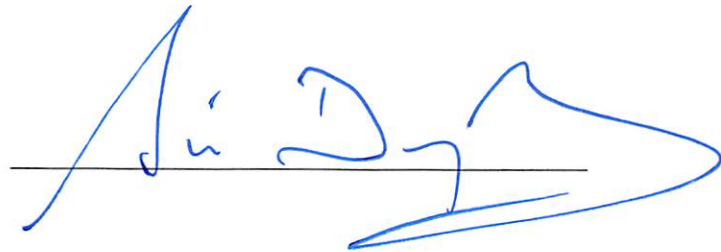
- (a) the pendency of these proceedings;

- (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.

9. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Retail Sales Tax Act* (Ontario) and section 6(3) of the *Retail Sales Tax Act* (Ontario).

10. 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. 17-11827-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

**Applicant**

**- and -**

**2203284 ONTARIO INC.**

**Respondent**

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (the "Court") dated June 22, 2017, msi Spergel Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of 2203284 Ontario Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated May 16, 2018 the Court approved the agreement of purchase and sale made as of February 8, 2018 (the "Sale Agreement") between the Receiver and Hue Developments & Investments Canada Inc. (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 section 4.1 and section 4.2 of the Sale Agreement have been satisfied or waived by the Receiver and the

Purchaser, respectively; 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 section 4.1 and section 4.2 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 \_\_\_\_\_ on \_\_\_\_\_ .

**msi Spergel Inc. in its capacity as Receiver of  
the undertaking, property and assets of  
2203284 Ontario Inc., and not in its personal  
capacity**

Per: \_\_\_\_\_

Name:

Title:

**Schedule B – Real Property**

LRO: 62

PIN: 17171-0009 (LT)

Description: PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON;  
PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON  
(BTN HUNTER ST. MACNAB ST. JACKSON ST & JAMES ST) AS IN HA59712;  
CITY OF HAMILTON

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

1. CHARGE registered 2013/06/13 as Instrument No. WE903381;
2. CHARGE registered 2014/10/30 as Instrument No. WE998973;
3. POSTPONEMENT registered 2014/10/30 as Instrument No. WE998974;
4. NOTICE registered 2015/04/10 as Instrument No. WE1029640;
5. CHARGE registered 2015/07/08 as Instrument No. WE1048981;
6. NOTICE OF ASSIGNMENT OF RENTS registered 2015/07/08 as Instrument No. WE1048982;
7. POSTPONEMENT registered 2015/07/08 as Instrument No. WE1048988;
8. POSTPONEMENT registered 2015/07/08 as Instrument No. WE1048989;
9. CHARGE registered 2016/04/11 as Instrument No. WE1111875;
10. CHARGE registered 2016/08/12 as Instrument No. WE1141288;
11. POSTPONEMENT registered 2016/08/12 as Instrument No. WE1141293;
12. POSTPONEMENT registered 2016/08/12 as Instrument No. WE1141294;
13. CONSTRUCTION LIEN 2017/08/24 registered as Instrument No. WE1231330;
14. CERTIFICATE registered 2017/10/10 as Instrument No. WE1242330; and
15. APL COURT ORDER registered 2017/10/20 as Instrument No. WE1244869
16. *Personal Property Security Act* (“PPSA”) registrations affecting the Purchased Assets, including the following:
  - a) PPSA File Number 701132553 in favour of The Guarantee Company of North America;
  - b) PPSA File Number 707377941 in favour of Duca Financial Services Credit Union Ltd.;
  - c) PPSA File Number 707378715 in favour of Duca Financial Services Credit Union Ltd.; and
  - d) PPSA File Number 719522406 in favour of 1220356 Ontario Limited.



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

**(unaffected by the Vesting Order)**

**Capitalized terms used and not otherwise defined below shall have the definitions ascribed to such terms by the Sale Agreement**

**A. GENERAL**

1. Encumbrances, liens, charges or prior claims for real property taxes (which term includes charges, rates and assessments) or for electricity, power, gas, water and other services and utilities (including levies or imposts for sewers and other municipal utility services) in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by the Vendor;
2. subdivision agreements, site plan control agreements, development agreements (including amendments thereto or assumptions thereof), servicing agreements, utility agreements, facility cost sharing, sidewalk indemnification or similar agreements with Governmental Authorities or entities delivering, transmitting or supplying utilities that do not materially impair the use, operation or marketability of the Property;
3. restrictive covenants, private deed restrictions, and other similar land use control agreements that do not materially impair the use, operation or marketability of the Property;
4. encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners that in either case do not materially impair the use, operation or marketability of the Property;
5. any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant from the Crown;
6. the provisions of all Applicable Laws including, by-laws, regulations, and similar instruments relating to development and zoning such as, airport zoning regulations, use, development and building by-laws and ordinances and other restrictions as to the use of the Property and all active permits and inspection files regarding tenant, landlord and owner work at the Building and any minor active permit and inspection files outstanding in respect of elevating devices, boiler and pressure vessels and other restrictions as to the use of the Land, and all active permits;
7. any minor title defects, minor zoning or code non-compliance issues, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Property as disclosed by the plan of survey, certificate of location or technical description, if any, of the Property made available by the Vendor to the Purchaser;
8. the exceptions and qualifications contained in the *Land Titles Act* (Ontario);
9. any rights of expropriation, access or user or any other rights conferred or reserved by or in any statutes of Canada or of the Province of Ontario or any by-law of the City of Hamilton;

10. any unregistered interest in the Property (including, Leases, claims, agreements of purchase and sale, options and other encumbrances) of which the Purchaser has notice or ought reasonably should have had notice by virtue of its Due Diligence;
11. any unregistered easements regarding the provision of utilities to the Property;
12. permits, licenses, agreements, easements, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons or Governmental Authority (including, heritage easements and agreements relating thereto), restrictions, restrictive covenants, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons (including, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables);
13. security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Property in the ordinary course of business including, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property;
14. undetermined or inchoate liens incidental to construction, renovation or current operations, a claim for which shall not at the time have been registered against the Property or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Lien Act* (Ontario), and in respect of any of the foregoing cases, the Vendor, where applicable, has complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Property therefrom;
15. any and all statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to the Property and of which the Vendor does not have notice, claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario, or by any other Governmental Authority under or pursuant to any Applicable Laws;
16. any matters disclosed by any survey delivered or deemed to be delivered to the Purchaser including, any discrepancies, defects or encroachments which are disclosed by the existing survey or which might be disclosed by an up-to-date survey and the encroachments specifically provided for in the legal descriptions of the Property;
17. without limiting the generality of the foregoing, all Existing Contracts and other Property Information Disclosed to the Purchaser as well as all Approved Contracts.

**B. SPECIFIC**

18. BYLAW registered 1990/02/16 as Instrument VM36576;
19. AGREEMENT - HISTORICAL EASEMENT registered 1990/09/01 as VM60787, and
20. NOTICE OF CLAIM registered 1992/02/17 as Instrument VM111553.

DUCA FINANCIAL SERVICES CREDIT UNION LTD.  
Applicant

and

2203284 ONTARIO LTD.  
Respondent

Court File No.: CV-17-11827-00CL

*ONTARIO*

**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at

TORONTO

**APPROVAL AND VESTING ORDER**

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