

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

THE HONOURABLE MR.) FRIDAY, THE 6th DAY
JUSTICE KOEHNEN) OF NOVEMBER, 2020

BETWEEN:

LAURENTIAN BANK OF CANADA

Applicant

- and -

2145744 ONTARIO LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) 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 KSV Restructuring Inc.¹, in its capacity as receiver (in such capacity, the “**Receiver**”), of the real property known as 203 Indian Road South, Sarnia, Ontario and all other property, assets and undertakings of 2145744 Ontario Limited (the “**Debtor**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Abdul Khaliq (in trust for a company to be incorporated) dated July 3, 2020 (the “**Sale Agreement**”), a copy of which is attached as Confidential Appendix 2 to the Second Report of the Receiver dated July 20, 2020 (the “**Second Report**”), and vesting in 2768186 Ontario Inc. (the “**Purchaser**”) all of the Receiver’s and the Debtor’s right, title and interest in and to the Purchased Assets (as defined in

¹ KSV Kofman Inc. was the entity appointed as receiver in these proceedings. Effective as of August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

the Sale Agreement), was heard this day via ZOOM videoconference as a result of the COVID-19 pandemic.

ON READING the Second Report and the appendices thereto and on hearing the submissions of counsel for the Receiver, the Applicant and those parties listed on the counsel slip, no one else appearing for any other person although duly served as appears from the affidavit of service of Danny Nunes sworn July 21, 2020, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing 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 AGREEMENT

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, or as it may direct.

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 right, title and interest of the Receiver, the Debtor and 2145754 Ontario Limited (if any) in and to the Purchased Assets described in the Sale Agreement, including without limitation the subject real property identified in Schedule "B" hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, or as it may direct, 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, leases, notices of lease, subleases, licenses, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, 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 Mr. 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 and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

4. **THIS COURT ORDERS** that upon registration in the Land Registry Office for the Land Titles Division of Lambton (#25) 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 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) (the “**BIA**”) in respect of

the Debtor and any bankruptcy order issued pursuant to any such applications;

- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser, or as it may direct, 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 BIA 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.

APPROVAL OF DISTRIBUTIONS

8. **THIS COURT ORDERS** that the Receiver is authorized to make distributions to Laurentian and BDO Canada Limited, in its capacity as receiver of 2145754 Ontario Limited, in accordance with the Second Report.

SEALING

9. **THIS COURT ORDERS** that Confidential Appendices 1 and 2 to the Second Report shall be sealed pending further Order of this Court.

APPROVAL OF SECOND REPORT

10. **THIS COURT ORDERS** that the Second Report and the activities of the Receiver set out therein are hereby approved.

GENERAL

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada 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.

RAJ

SCHEDULE “A”

FORM OF RECEIVER’S CERTIFICATE

Court File No. CV-19-00631895-00CL

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

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- and -

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RECEIVER’S CERTIFICATE

RECITALS

I. Pursuant to the Order of the Honourable Mr. Justice Hailey of the Ontario Superior Court (Commercial List) (the “**Court**”) dated December 16, 2019, KSV Restructuring Inc.¹, in its the receiver (in such capacity, the “**Receiver**”), without security, of the real property known as 203 Indian Road South, Sarnia, Ontario (the “**Lands**”) and all other property, assets and undertakings of 2145744 Ontario Limited (the “**Debtor**”), related thereto (collectively, together with the Lands, the “**Property**”).

¹ KSV Kofman Inc. was the entity appointed as the receiver in these proceedings. Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

II. Pursuant to an order of the Court dated July 27, 2020, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and Abdul Khaliq (in trust for a company to be incorporated) dated July 3, 2020 (the “**Sale Agreement**”), and provided for the vesting in 2768186 Ontario Inc. (the “**Purchaser**”) of all the Receiver’s and the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 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.

III. Unless otherwise indicated herein, capitalized terms 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 the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., in its capacity as court-appointed receiver of the real property known as 203 Indian Road South, Sarnia, Ontario and all other property, assets and undertakings of 2145744 Ontario Limited, and not in its personal or corporate capacity.

Name:

Title:

SCHEDULE "B"

LEGAL DESCRIPTION OF REAL PROPERTY

PT LT 37-38 RANGE 6 PL 16 1/2 SARNIA CITY AS IN L916481 & L899212, AMENDED BY DECLARATION L901383; SARNIA

Municipally described as: 203 Indian Road South, Sarnia, Ontario

The Real Property shall include fuel storage tanks, canopy, pumps, dispensers and fuel lines and accessories located on the Real Property and used for gas station operation

SCHEDULE “C”

INSTRUMENTS/ENCUMBRANCES TO BE DELETED FROM PIN 43226-0127

1. Charge registered on April 3, 2018 as Instrument No. LA200573
2. Notice of Assignment of Rent registered on April 3, 2018 as Instrument No. LA200574
3. Charge registered on October 9, 2018 as Instrument No. LA210064
4. Notice of Assignment of Rent registered on October 9, 2018 as Instrument No. LA210065
5. Application to Register Court Order registered on November 1, 2019 as Instrument No. LA227047
6. Restrictions Order registered on November 4, 2019 as Instrument No. LA228832
7. Construction Lien registered on November 8, 2019 as Instrument No. LA229126
8. Application to Register Court Order registered on December 18, 2019 as Instrument No. LA231244
9. Certificate registered on January 6, 2020 as Instrument No. LA231975
10. Application to Register Vesting Order registered on July 8, 2020 as Instrument No. LA240147

SCHEDULE "D"

**PERMITTED INSTRUMENTS/ENCUMBRANCES TO REMAIN
ON PIN ♦**

LAURENTIAN BANK OF CANADA

Applicant

- and -

2145744 ONTARIO LIMITED

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

**ORDER
(Approval and Vesting Order)**

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto ON M5X 1E2

Edmond F.B. Lamek (LSO No. 33338U)
Tel: 416.365.4444
Email: edmond.lamек@dlapiper.com

Danny M. Nunes (LSO No. 53802D)
Tel: 416.365.3421
Email: danny.nunes@dlapiper.com

Lawyers for the Receiver