

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

THE HONOURABLE MR.
JUSTICE HAINEY

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THURSDAY, THE 23rd DAY
OF AUGUST, 2018

BETWEEN:

CHINA MACHINERY ENGINEERING CORPORATION

Applicant

-and-

**2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP and
2270613 ONTARIO INC.**

Respondents

RECEIVER DISCHARGE ORDER

THIS MOTION, made by 2284649 Ontario Inc., 2270613 Limited Partnership and 2270613 Ontario Inc. (collectively, the “**Debtors**”), for an order or orders; (i) lifting the stay of proceedings contained in the Order of the Honourable Mr. Justice McEwen dated February 6, 2018 appointing KSV Kofman Inc. (“**KSV**”), as receiver (the “**Receiver**”) of certain property (the “**Property**”) of the Debtors (the “**Receivership Order**”), to permit the Debtor to redeem the mortgage in favour of the Applicant (the “**Mortgage**”) on or before August 31, 2018 (the “**Redemption**”); and (ii) discharging the Receiver effective upon the delivery of a certificate by the Receiver to the Debtors certifying that the conditions precedent to the Redemption have been satisfied or waived (the “**Discharge**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Order of the Honourable Mr. Justice McEwen dated July 26, 2018 (the “**Lift Stay Order**”), the Third Report of the Receiver dated August 21, 2018 (the “**Third**



Report") and the fees affidavits of Bobby Kofman and Edmond Lamek appended thereto (the "**Fees Affidavits**"), and on hearing the submissions of counsel for the Receiver, the Applicant and the Debtors, no one else appearing at the July 26, 2018 hearing of the Debtor's motion although duly served as evidenced by the Affidavits of Service, filed;

SERVICE

1. **THIS COURT ORDERS** that pursuant to paragraph 3 of the Lift Stay Order, the portion of the Debtors' motion in respect of the Discharge is properly returnable today and this Court hereby dispenses with further service thereof.

APPROVAL OF THE THIRD REPORT

2. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Third Report, are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the Fees Affidavits, are hereby approved.

4. **THIS COURT ORDERS** that notwithstanding its discharge as Receiver, KSV be and is hereby authorized to retain from the cash portion of the Property, a holdback in the amount of up to \$940,000 (the "**Administrative Holdback**") on account of (i) accrued and unpaid amounts owing by the Receiver up to and including the effective date of the Receiver's discharge (the "**Discharge Date**"), including the amount payable to TD Cornerstone Commercial Realty Inc. ("**TD**") on account of the fee payable to TD pursuant to the Multiple Listing Services Agreement attached at Confidential Appendix 2 of the Receiver's First Report dated June 15, 2018 and sealed pursuant to the Order dated June 22, 2018 ("**Receivership Accruals**"), (ii) the fees of the Receiver and its counsel from August 1, 2018 up to and including the Discharge Date; and (iii) the fees and disbursements of KSV and its counsel in respect of statutory and other administrative obligations of KSV arising after the Discharge Date (the "**Administrative Obligations**").

5. **THIS COURT ORDERS** that KSV shall release any unused portion of the Administrative Holdback to the Debtors or as the Debtors' counsel may direct, upon that latter of: (i) the satisfaction of all Administrative Obligations, and (ii) KSV in its sole discretion being satisfied that all Receivership Accruals have been paid in full, or liability for any outstanding Receivership Accruals have been duly assumed by the Debtors and KSV has been indemnified to its satisfaction by the Debtors in respect of such assumed Receivership Accruals, or by further order of the Court.

APPROVAL OF AUTHORIZED CLOSING PAYMENTS

6. **THIS COURT ORDERS** that, conditional on the closing of the Redemption, and subject to the Administrative Holdback, the Receiver be and is hereby authorized to make the "Authorized Closing Payments" described in the Third Report, from the Property on the Discharge Date.

TERMINATION OF SALES PROCESS

7. **THIS COURT ORDERS** that conditional and with effect upon the Receiver's Discharge, the sales process in respect of the Property approved pursuant to the Order of the Honourable Mr. Justice McEwen dated July 5, 2018, be and is hereby terminated.

RECEIVER'S DISCHARGE

8. **THIS COURT ORDERS** that conditional and with effect upon the Receiver delivering a certificate certifying that the conditions of Closing of the Redemption have been waived or satisfied to the satisfaction of the Receiver substantially in the form attached as Schedule "A" hereto (the "**Discharge Certificate**") to the Debtors, KSV shall be discharged as Receiver of the Property of the Debtors, provided however that notwithstanding its discharge as Receiver herein KSV shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all authorizations, approvals, protections and stays of proceedings in favour of KSV in its capacity as Receiver and, subject to paragraph 10 below, the benefit of the Receiver's Charge, including, without limitation, in respect of the completion of the Administrative Obligations.

9. **THIS COURT ORDERS** that KSV shall file a copy of the Discharge Certificate with the Commercial List Court Office as soon as practicable after delivery of the Discharge Certificate to the Debtor.

10. **THIS COURT ORDERS** that conditional and with effect upon the Receiver's Discharge, the Receiver's Charge and the Receiver's Borrowing Charge set out in paragraphs 18 and 21 respectively of the Receivership Order, be and are hereby discharged and vacated from the Property, save and except that the Receiver's Charge shall continue to charge the Administrative Holdback.

11. **THIS COURT ORDERS** that, notwithstanding the Receiver's discharge, these receivership proceedings shall continue solely for the purpose of: (i) the disposition of the Applicant's motion to determine the validity and quantum of the Applicant's claim against the Debtors (the disputed portion thereof being the "**Disputed Amount**"), which motion shall be heard in accordance with the Claim Adjudication Timetable and Protocol Order of the Honourable Mr. Justice McEwen dated May 7, 2018; and (ii) the payment into Court by the Debtors, pursuant to a separate Order of concurrent date, of funds equal to the Disputed Amount (or such other amount agreed to between the Debtors and the Applicants).

DISCONTINUANCE OF CONSTRUCTION LIEN CLAIMS

12. **THIS COURT ORDERS** that upon the Receiver's Discharge, all actions commenced on account of construction liens relating to the Property (the "**Construction Lien Actions**") naming KSV or the Receiver as a defendant thereto, including those Construction Lien Actions listed in Schedule "B" hereto, be and are hereby discontinued and dismissed solely as against KSV and the Receiver, and the style of cause in each of the Construction Lien Actions shall be amended accordingly to remove KSV and the Receiver as a defendant thereto.

13. **THIS COURT ORDERS AND DECLARES** that KSV is hereby released and discharged from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting in its capacity as Receiver herein, including but not limited to any and all liability arising out of the Construction Lien

Actions, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, KSV 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.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

AUG 23 2018

PER / PAR:



SCHEDULE "A"

FORM OF RECEIVER'S CERTIFICATE

Court File No.: CV-18-591534-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

BETWEEN:

CHINA MACHINERY ENGINEERING CORPORATION

Applicant

-and-

**2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP and
2270613 ONTARIO INC.**

Respondents

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

RECEIVER'S CERTIFICATE

(Re: Redemption of Applicant's Mortgage and Receiver's Discharge.)

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated February, 6, 2018, KSV Kofman Inc. was appointed as Receiver of certain

property, assets and undertaking of the Debtors including the Real Properties known municipally as 250, 252 and 256 Phillip Street, Waterloo, Ontario. (the "**Property**").

B. Pursuant to an Order of the Court dated August XX, 2018, the Court ordered the Discharge of the Receiver to become effective (and conditional) upon the upon the delivery by the Receiver to the Debtors of a Certificate confirming (i) that the conditions to Closing of the Redemption of the Applicant's Mortgage by the Debtors, other than the delivery of this Certificate by the Receiver, have been satisfied or waived; and (iii) the Redemption has been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES the following:

1. The conditions to Closing of the Redemption of the Applicant's Mortgage by the Debtors, other than the delivery of this Certificate by the Receiver, have been satisfied or waived.
2. The Redemption has been completed to the satisfaction of the Receiver.
3. This Certificate was delivered by the Receiver at _____ on August __, 2018.

KSV KOFMAN INC., in its capacity as Receiver of the Property of the Debtors and not in its personal capacity

Per: _____
Name:
Title:

SCHEDULE "B"

	Lien Claimant	Instrument	Registration Date of Construction Lien	Amount	Court File No.	Instrument
1.	Melloul-Blamey Construction	WR1098187	February 20, 2018	8,109,944.47	C-309/18	WR1102442
2.	CRH Canada Group	WR1096972	February 12, 2018	260,497.89	C-519-18	WR1109240
3.	HARRIS Steel ULC	WR1097730	February 15, 2018	930,442.90	C-414-18	WR1106944
4.	Pro Electric Inc.	WR1098251	February 21, 2018	512,839.04	C-393-18	WR1105462
5.	Pro Electric Inc.	WR1098257	February 21, 2018	299,566.09	C-392-18	WR1105464
6.	Peri formwork Systems Inc.	WR1101244	March 8, 2018	71,684.04	C-409-18	WR1105679
7.	McKnight Charron Limited	WR1101421	March 9, 2018	73,301.50	C-451-18	WR1108042
8.	G. Melo Excavating	WR1101864	March 13, 2018	98,373.28	CV-18-536	WR1111191
9.	Stephenson Engineering Ltd.	WR1103286	March 21, 2018	13,019.52	C-485-18	WR1108619
10.	Redline Structures Ontario Inc.	WR1103695	March 22, 2018	1,302,864.24	C-421-18	WR1106888
11.	Redline Structures Ontario Inc.	WR1097866	February 16, 2018	1,302,864.24	C-301-18	WR1102624
12.	Morrow Equipment Company	WR1098081	February 20, 2018	251,630.60	C-471-18	WR1107899
13.	Sky Window Technologies	WR1098166	February 20, 2018	125,000.00	C-288-18	WR1101749
14.	Tri-Con Haid Concrete Finishing	WR1101410	March 9, 2018	55,709.00	C-410-18	WR1106703
15.	Tri-Con Haid Concrete Finishing	WR1101411	March 9, 2018	64,542.21	C-411-18	WR1106704
16.	Ttitan Formwork Systems	WR1105955	April 6, 2018	87,645.53		WR1115801
17.	Orangeville Concrete Pumping	WR1099455	February 27, 2018	39,513.30		

BETWEEN:

**CHINA MACHINERY ENGINEERING CORPORATION - and - 2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP
and 2270613 ONTARIO INC.**

	<p><i>ONTARIO</i> SUPERIOR COURT OF JUSTICE (Commercial List)</p>
	<p>RECEIVER DISCHARGE ORDER</p>
	<p>DLA PIPER (CANADA) LLP Barristers & Solicitors 1 First Canadian Place, Suite 6000 100 King Street West Toronto, ON M5X 1E2</p> <p>Edmond F.B. Lamek (LSUC No. 33338Q) Tel: 416-365-4444 Email: edmond.lamek@dlapiper.com</p> <p>Danny M. Nunes (LSUC No. 53802D) Tel: 416-365-3421 Email: danny.nunes@dlapiper.com</p> <p>Lawyers for the Receiver</p>