



Court File No. CV-18-608978-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE **MR.**
JUSTICE **HAZNEY**

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THURSDAY, THE 11TH DAY
OF JULY, 2019

**BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.**

- and -

1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

**APPROVAL AND VESTING ORDER
(Stouffville Property)**

THIS MOTION, made by KSV Kofman Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. operating as Forma-Con Construction and Forma Finishing (“**Forma-Con**”) and 1087507 Ontario Limited (together with Forma-Con, the “**Debtors**”); (ii) certain assets of Bondfield Construction Company Limited (“**BCCL**”) and Bondfield Construction Equipment Ltd (“**BCEL**”); and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario 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 Tree Valley Garden Centre Ltd. (the “**Purchaser**”), as purchaser, dated June 24, 2019 (the “**Sale Agreement**”), a copy of which is attached as Confidential Appendix 4 to the Sixth Report of the Receiver dated July 4, 2019 (the “**Sixth Report**”), and vesting in the Purchaser, or as it may direct in accordance with

the Sale Agreement, all the Receiver's and the Debtors' right, title and interest in and to the property described as the "Purchased Assets" in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Sixth Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Cathy Pellegrini sworn July 5, 2019, filed and the affidavit of Siva Sivaperuman sworn July 5, 2019, 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, or as it may direct.
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 the Receiver's and the Debtors' right, title and interest 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, licences, 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 November 19, 2018; (ii) all charges, security interests or claims evidenced by registrations

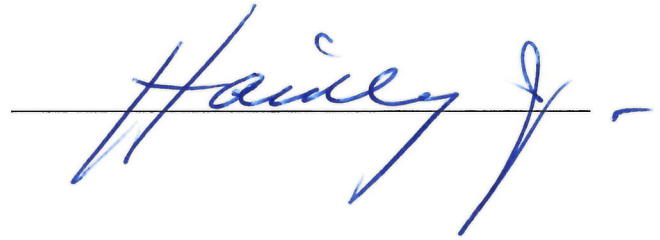
pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule “C” hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and 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.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division 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 TVGC Inc. as the owner of 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 Debtors and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the Debtors,

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 Debtors and shall not be void or voidable by creditors of the Debtors, 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** that Confidential Appendices 2 and 4 to the Sixth Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

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.



SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE

Court File No. CV-18-608978-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.

- and -

1033803 ONTARIO INC. and 1087505 ONTARIO LIMITED

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 19, 2018, KSV Kofman Inc. was appointed as receiver and manager (in such capacity, the "**Receiver**") of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. operating as Forma-Con Construction and Forma Finishing ("**Forma-Con**") and 1087507 Ontario Limited (together with Forma-Con, the "**Debtors**"); (ii) certain assets of Bondfield Construction Company Limited ("**BCCL**") and Bondfield Construction Equipment Ltd ("**BCEL**"); and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario.

II. Pursuant to an Order of the Court dated <*>, 2019, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and <*> (the "**Purchaser**"), as purchaser, dated <*>, 2019 (the "**Sale Agreement**"), and provided for the vesting in the Purchaser, or as it

may direct in accordance with the Sale Agreement, of all the Receiver's and the Debtors' 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, 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 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 KOFMAN INC., in its capacity as Court-appointed receiver and manager of: (i) all the assets, undertakings and properties of 1033803 Ontario Inc. and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario, and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

4431 Stouffville Road, Stouffville, Ontario

PIN 03725-0367(LT): PT LOT 35 CON 6 MARKHAM AS IN R643215 EXCEPT PT 1, EXPROP
PL YR1315253. S/T MA23836 IF ANY ; WHITCHURCH-STOUFFVILLE

SCHEDULE "C"
INSTRUMENTS TO BE DELETED

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
R670518	December 18, 1995	Charge	\$1,413,723	1087507 Ontario Limited	Ralph Aquino
YR2706728	July 25, 2017	Charge	\$90,000,000	1087507 Ontario Limited	Bridging Finance Inc.
YR2706729	July 25, 2017	Notice of Assignment of Rents-General	N/A	1087507 Ontario Limited	Bridging Finance Inc.
YR2706730	July 25, 2017	Postponement of Interest	N/A	Ralph Aquino	Bridging Finance Inc.
YR2706731	July 25, 2017	Postponement of Interest	N/A	Ralph Aquino	Bridging Finance Inc.

SCHEDULE "D"
PERMITTED ENCUMBRANCES

PART I: GENERAL PERMITTED ENCUMBRANCES

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this Agreement;
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including without limitation, official plans and zoning and Buildings by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable buildings codes;
3. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant Authority or regulated utility;
4. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Property;
5. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Property;
6. Such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Property or any part thereof, or materially impair the value thereof;
7. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute.
8. The following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.

PART II: SPECIFIC PERMITTED ENCUMBRANCES

1. Instrument No. MA23836 registered on August 26, 1943 being a TRANSFER OF EASEMENT in favour of THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO.
2. Instrument No. R367196 registered on April 22, 1985 being a NOTICE OF SITE PLAN CONTROL AGREEMENT in favour of THE TOWN OF WHITCHURCH-STOUFFVILLE.

3. Instrument No. R412432 registered on October 10, 1986 being a NOTICE OF SITE PLAN CONTROL AGREEMENT in favour of THE TOWN OF WHITCHURCH-STOUFFVILLE.
4. Instrument No. YR700115 registered on September 14, 2005 being a NOTICE OF AIRPORT ZONING REGULATIONS in favour of HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT.

**SCHEDULE B
PERMITTED ENCUMBRANCES**

PART I: GENERAL PERMITTED ENCUMBRANCES

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this Agreement;
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including without limitation, official plans and zoning and Buildings by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable Buildings codes;
3. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant Authority or regulated utility;
4. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Property;
5. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Property;
6. Such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Property or any part thereof, or materially impair the value thereof;
7. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute; and
8. The following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.

PART II: SPECIFIC PERMITTED ENCUMBRANCES

1. Instrument No. MA23836 registered on August 26, 1943 being a TRANSFER OF EASEMENT in favour of THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO.
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4. Instrument No. YR700115 registered on September 14, 2005 being a NOTICE OF AIRPORT ZONING REGULATIONS in favour of HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT.

**SCHEDULE C
LEGAL DESCRIPTION OF LANDS**

4431 Stouffville Road, Stouffville, Ontario

PIN 03725-0367(LT): PT LOT 35 CON 6 MARKHAM AS IN R643215 EXCEPT PT 1, EXPROP
PL YR1315253. S/T MA23836 IF ANY ; WHITCHURCH-STOUFFVILLE

SCHEDULE D
LIST OF ASSUMED CONTRACTS

II contracts relating to the Property as may be disclosed by the Receiver or its broker to the Purchaser or the Purchaser's Solicitor.

SCHEDULE E
LIST OF LEASES

1. Lease dated August, 2013 between 1087507 Ontario Limited, as landlord, and Treevalley Garden Centre Ltd., as tenant, in respect of certain lands and/or premises on the Lands more particularly described therein.

**BRIDGING FINANCE INC.,
as agent for 2665405 ONTARIO INC.**

**1033803 ONTARIO INC. and
1087507 ONTARIO LIMITED**

Applicant

Respondents

Court File No. CV-18-608978-00CL

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

Proceedings commenced in Toronto

ORDER

**(Returnable July 11, 2019)
(Approval of Stouffville Transaction)**

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Lawyers for KSV Kofman Inc.,
in its capacity as Court-appointed Receiver