

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) FRIDAY, THE 21st
)
JUSTICE CAVANAGH) DAY OF JANUARY, 2021

**IN THE MATTER OF SECTION 243 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**

B E T W E E N:

CALLIDUS CAPITAL CORPORATION

Applicant

- and -

JD NORMAN CANADA, ULC

Respondent

APPROVAL, VESTING AND DISCHARGE ORDER

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver (the “**Receiver**”) of the property, assets and undertakings of JD Norman Canada, ULC (the “**Debtor**”) for an order, *inter alia*, (i) approving the sale transaction (the “**Transaction**”) of the real property known as 6845 Hawthorne Drive, Windsor, Ontario (the “**Property**”), the legal description of which is set out in Schedule “A” hereto, contemplated by an agreement of purchase and sale between the Receiver and Nexe Innovations Inc., on behalf of a company to be incorporated (the “**Original Purchaser**”), dated December 22, 2021 (as amended by the first amendment to agreement of purchase and sale dated December 23, 2021, the “**Sale Agreement**”) and appended to the Fourth Report of the Receiver dated January 14, 2022 (the “**Fourth Report**”), which Sale Agreement was subsequently assigned to G-Pak

Holdings Ltd. (the “**Purchaser**”) by way of assignment and assumption agreement between the Original Purchaser, the Receiver and the Purchaser, dated January 20, 2022, (ii) vesting in the Purchaser the Debtor’s right, title and interest in and to the Property, (iii) approving the Fourth Report and the Receiver’s activities described therein, and the Receiver’s fees and disbursements, including the fees and disbursements of its counsel and the Fee Accrual (as defined in the Fourth Report), (iv) sealing certain confidential appendices to the Fourth Report until the closing of the Transaction (the “**Confidential Appendices**”), and (v) discharging the Receiver in accordance with the Fourth Report, subject to the Receiver filing a Discharge Certificate (as defined herein) with the Court, and upon filing the Discharge Certificate with the Court, releasing and discharging KSV from any and all liability in its capacity as Receiver, and other relief, was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Fourth Report, the affidavit of David Sieradzki sworn January 14, 2022 and attached as Appendix “I” to the Fourth Report (the “**Sieradzki Affidavit**”) and the affidavit of Marc Wasserman sworn January 14, 2022 and attached as Appendix “J” to the Fourth Report (the “**Wasserman Affidavit**”, and together with the Sieradzki Affidavit, the “**Fee Affidavits**”) filed, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Purchaser, and those other parties present, no one else appearing although duly served as appears from the affidavits of service of Chloe Nanfara, made January 14 and 17, 2022:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Fourth Report herein is hereby abridged and validated so that this Motion is properly returnable today and any further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Fourth Report.

APPROVAL OF THE TRANSACTION AND VESTING OF THE PROPERTY

3. **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 Property to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon (a) the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "B" hereto (the "**Receiver's Certificate**") and (b) registration in the Land Registry Office for the Land Titles Division of Essex of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, all of the Debtor's right, title and interest in and to the 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**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated February 12, 2021 in the within proceeding (the "**Receivership Order**"); (ii) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated May 4, 2021 in the within proceeding; (iii) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated November 16, 2021 in the within proceeding; and (iv) 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 (v) 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 Property are hereby expunged and discharged as against the Property.

5. **THIS COURT ORDERS** that upon registration in the Land Registry Office for the Land Titles Division of Essex 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 Property in fee simple, and is hereby directed to delete and expunge from title to the Property all of the Claims listed in Schedule "C" hereto.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, 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 Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, in connection with the Transaction, and 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 personal information of identifiable individuals, but only to the extent desirable or required to complete the Transaction. The Purchaser shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Receiver, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

9. **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 Property 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.

RECEIVER'S REPORT, ACTIVITIES, FEES AND DISBURSEMENTS

10. **THIS COURT ORDERS** that the Fourth Report be and is hereby approved and the activities of the Receiver as described therein be and is hereby approved.

11. **THIS COURT ORDERS** that the professional fees and disbursements of the Receiver and its counsel, as set out in the Fourth Report and the Fee Affidavits, and the Fee Accrual be and are hereby approved.

SEALING

12. **THIS COURT ORDERS** that the Confidential Appendices shall be sealed and kept confidential pending completion of the Transaction.

DISCHARGE

13. **THIS COURT ORDERS AND DECLARES** that upon the Receiver filing with the Court a certificate, substantially in the form attached as Schedule "E" hereto (the "**Discharge Certificate**"), certifying that all matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, KSV shall be discharged as Receiver, provided however that notwithstanding its discharge herein (a) KSV shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership of the Debtor, and (b) KSV shall continue to have the benefit of all the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.

14. **THIS COURT ORDERS AND DIRECTS** that upon filing the Discharge Certificate, KSV shall be released and discharged from any and all liability that KSV has or may thereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the

Receiver's part. Without limiting the generality of the foregoing, upon filing the Discharge Certificate, KSV shall be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the receivership proceedings of the Debtor, save and except for any gross negligence or wilful misconduct on the Receiver's part.

13. **THIS COURT ORDERS** that upon filing the Discharge Certificate, the Receiver's Charge and the Receiver's Borrowings Charge (each as defined in the Receivership Order) shall be terminated, released and discharged.

GENERAL

15. **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.

16. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

SCHEDULE "A"

LEGAL DESCRIPTION OF PROPERTY

PIN: 01379-0091 (LT)

DESCRIPTION: PT BLK E PL 1644 WINDSOR PTS 2 & 3 12R12466; WINDSOR

SCHEDULE “B”

FORM OF RECEIVER’S CERTIFICATE

Court File No. CV-21-00656820-00CL

ONTARIO

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ACT, R.S.O. 1990, C. C.43, AS AMENDED**

B E T W E E N:

CALLIDUS CAPITAL CORPORATION

Applicant

- and -

JD NORMAN CANADA, ULC

Respondent

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the “**Court**”) dated February 12, 2021, KSV Restructuring Inc. was appointed as the receiver, without security (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of the Respondent, JD Norman Canada, ULC (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the real property known as 6845 Hawthorne Drive, Windsor, Ontario (the “**Property**”).

B. Pursuant to an Order of the Court dated January 21, 2022, the Court approved the agreement of purchase and sale between the Receiver and Nexe Innovations Inc., on behalf of a company to be incorporated (the “**Original Purchaser**”), dated December 22, 2021 (as amended by the first amendment to agreement of purchase and sale dated December 23, 2021 and as assigned to G-Pak Holdings Ltd. (the “**Purchaser**”) by an assignment and assumption agreement

between the Original Purchaser, the Receiver and the Purchaser, dated January 20, 2022, collectively, the “**Sale Agreement**”) with respect to the Property and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Property, which vesting is to be effective with respect to the Property 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 Property; (ii) that the conditions to Closing as set out in section 10 of the Sale Agreement have been satisfied or waived by the Receiver; 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 Property payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 10 of the Sale Agreement have been satisfied or waived by the Receiver; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV Restructuring Inc., in its capacity as
Receiver and Manager of the property, assets
and undertakings of JD Norman Canada,
ULC, and not in its personal capacity**

Per: _____
Name:
Title:

SCHEDULE “C”

REGISTRATIONS TO BE DELETED AND EXPUNGED FROM TITLE TO PIN 01379-0091 (LT)

- (i) Instrument No. CE571214 registered 2013/07/02 being a Transfer in favour of JD Norman Canada, ULC.
- (ii) Instrument No. CE837574 registered 2018/07/10 being a Charge in favour of Callidus Capital Corporation.
- (iii) Instrument No. R932547 registered on 1985/03/26 being an Agreement regarding a right of first refusal between Peerless-Cascade Plastics Limited and Windsor Plastic Products Limited.

SCHEDULE “D”

PERMITTED REGISTRATIONS ON PIN 01379-0091 (LT)

- (i) any reservations, restrictions, rights of way, easements or covenants that run with the Property;
- (ii) any registered agreements with a municipality, region or supplier of utility service including, without limitations, electricity, water, sewage, gas, telephone or cable television or other telecommunication services;
- (iii) all laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Property;
- (iv) any minor easements for the supply of utility services or other services to the Property or adjacent Property;
- (v) encroachments disclosed by any error or omission in existing surveys of the Property or neighbouring Property and any title defects, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Property and survey of the Property and survey matters generally;
- (vi) the exceptions and qualifications set forth in the Land Titles Act (Ontario), or amendments thereto, except paragraphs 11 and 14 of section 44 of such Act and provincial succession duties as of May 17, 1999;
- (vii) any reservation(s) contained in the original grant from Crown;
- (viii) the right of any tenant, occupant, lessee or licensee to remove fixed equipment or other fixtures;
- (ix) the rights of any person who would, but for the Land Titles Act (Ontario) be entitled to the Lands or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention;
- (x) Instrument No. 12R12466 registered 1993/03/11 being a plan of reference;
- (xi) Instrument No. 12R1844 registered 1974/10/25 being a plan of reference;
- (xii) Instrument No. 12R4577 registered 1978/08/28 being a plan of reference;
- (xiii) Instrument Nos. R844423 and R844424 registered 1981/10/27 being notices relating to Windsor Airport zoning by law amendments; and
- (xiv) Instrument No. 12R7590 registered 1984/07/09 being a plan of reference.

SCHEDULE “E”

Court File No. CV-21-00656820-00CL

ONTARIO

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B E T W E E N:

CALLIDUS CAPITAL CORPORATION

Applicant

- and -

JD NORMAN CANADA, ULC

Respondent

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the “**Court**”) dated February 12, 2021, KSV Restructuring Inc. (“**KSV**”) was appointed as the receiver, without security (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of the Respondent, JD Norman Canada, ULC (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the real property known as 6845 Hawthorne Drive, Windsor, Ontario.

B. Pursuant to an Order of the Court dated January 21, 2022 (the “**Approval, Vesting and Discharge Order**”), KSV was to be discharged as Receiver of the property, assets and undertakings of the Debtor to be effective upon filing by the Receiver with the Court of a certificate confirming all matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES the following:

1. All matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, subject to such incidental duties as may be required to complete the administration of the receivership.

1. This Certificate was filed by the Receiver with the Court on ____ day of _____,
_____.

**KSV Restructuring Inc., in its capacity as
Receiver and Manager of the property, assets
and undertakings of JD Norman Canada,
ULC, and not in its personal capacity**

Per: _____

Name:

Title:

**CALLIDUS CAPITAL
CORPORATION**

JD NORMAN CANADA, ULC

Court File No: CV-21-00656820-00CL

and

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT: TORONTO

APPROVAL, VESTING AND DISCHARGE ORDER

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