

Court File No. CV-19-00632106-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEDNESDAY, THE 26TH
)
JUSTICE HAINEY) DAY OF FEBRUARY, 2020

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

APPROVAL AND VESTING ORDER
(Walpole)

THIS MOTION, made by KSV Kofman Inc. (“KSV”) in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of the property, assets and undertaking of Rando Drugs Ltd. and the other respondents listed above (collectively, the “**Debtors**”) for orders:

- (a) approving the sale transactions for the sale of Novacare and Walpole (as both such terms are defined in the Sale Agreement and referred to herein as the “**Novacare Transaction**” and the “**Walpole Transaction**” respectively) contemplated by an agreement of purchase and sale dated as of December 18, 2019 as amended by an amendment to the agreement of purchase and sale dated as of January 31, 2020 (the

“**Sale Agreement**”) between the Receiver and 2258156 Ontario Inc. (the “**Purchaser**”) and appended to the Second Report of the Receiver dated February 19, 2020 (the “**Second Report**”);

- (b) vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in the Sale Agreement relating to and/or located at Novacare and Walpole (the “**Novacare Purchased Assets**” and “**Walpole Purchased Assets**” respectively);
- (c) assigning the Novacare Lease (defined below) to the Purchaser;
- (d) sealing the Confidential Appendices (defined below) pending further order of the Court; and
- (e) approving the Receiver’s activities as set out in the Second Report,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver and those other parties present no one appearing for any other person on the service list, although properly served as appears from the affidavits of Katie Parent sworn February 20 and 21, 2020, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transactions are 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 Transactions and for the conveyance of the Walpole Purchased Assets to the Purchaser.

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 “**Walpole Receiver's Certificate**”), any and all of the Debtors’ right, title and interest in and to the Walpole Purchased Assets described in the Sale Agreement 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 Mr. Justice Hainey dated December 4, 2019; and (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; (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Walpole Purchased Assets are hereby expunged and discharged as against the Walpole Purchased Assets.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Walpole Purchased Assets shall stand in the place and stead of the Walpole Purchased Assets, and that from and after the delivery of the Walpole Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Walpole Purchased Assets with the same priority as they had with respect to the Walpole Purchased Assets immediately prior to the sale, as if the Walpole 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.

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

5. **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 Debtors' records pertaining to the Debtors' 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 Debtors.

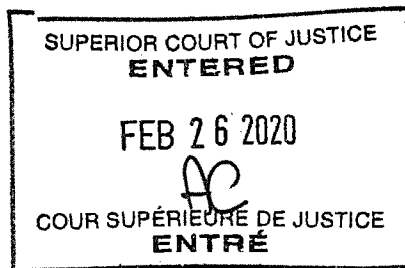
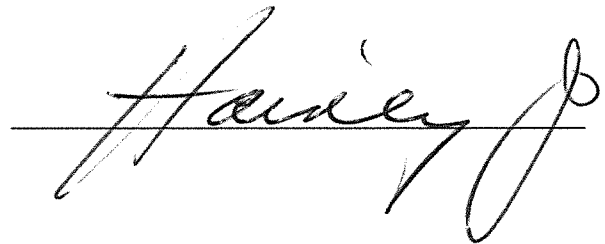
6. **THIS COURT ORDERS** that, notwithstanding:

(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 Walpole 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 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 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-19-00632106

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC. formerly known as M. BLACHER DRUGS LTD., 2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC. and 2527475 ONTARIO INC.

Respondents

**RECEIVER’S CERTIFICATE
(Walpole)**

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (the “**Court**”) dated December 4, 2019, KSV Kofman Inc. was appointed as the receiver (in such capacity, the “**Receiver**”) of the property, assets and undertaking of Rando Drugs Ltd. and the other Respondents listed above (the “**Debtors**”).

B. Pursuant to an Order of the Court dated [**DATE**], the Court approved certain transactions contained in an agreement of purchase and sale made as of December 18, 2019 (as amended, the “**Sale Agreement**”) between the Receiver and 2258156 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Walpole Purchased Assets, which vesting is to be effective with respect to the Walpole 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 allocated to the Walpole Purchased Assets; (ii) that the conditions to Closing as set out in section 6 of 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.

C. One of the approved transactions was for the sale of Walpole (as defined in the Sale Agreement).

D. 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 allocated to the Walpole Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing related to the sale of Walpole as set out in section 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction for the sale of Walpole has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV KOFMAN INC., in its capacity as
Receiver, of the property, assets and
undertaking of Rando Drugs Ltd. and not in
its personal capacity**

Per: _____
Name:
Title:

ECN FINANCIAL INC. and

Respondents

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced TORONTO

**APPROVAL OF VESTING ORDER
(Walpole)**

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