

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**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

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**FACTUM OF THE RECEIVER  
(Walpole and Novacare Approval and Vesting Orders)  
(Motion Returnable February 26, 2020)**

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February 22, 2020

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**FACTUM OF THE RECEIVER  
(WALPOLE AND NOVACARE APPROVAL AND VESTING ORDERS)**

**PART I – NATURE OF THIS MOTION**

1. This factum is filed in support of a 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 2345760 Ontario Inc. (“**2345**”), Rando Drugs Ltd. (“**Rando**”), 2275518 Ontario Inc. (“**2275**”), M. Blacher Drugs Ltd. (“**Blacher**”), 2501380 Ontario Inc. (“**2501**”), 2527218 Ontario Inc. (“**2527218**”), Dumopharm Inc. (“**Dumopharm**”) and 2527475 Ontario Inc. (“**2527475**”) (collectively, the “**Company**”), for, among other things, orders:

- (a) Authorizing the Receiver to enter into an asset purchase agreement dated as of December 18, 2019 (the “**Original APA**”), as amended on January 31, 2020 (the “**Amendment**” and together with the Original APA, the “**APA**”), between the Receiver and 2258156 Ontario Inc. (the “**Purchaser**”);
- (b) Approving the sale transactions (the “**Walpole Transaction**” and “**Novacare Transaction**” respectively and the “**Transactions**” collectively) contemplated in

the APA for the sale of the Company's pharmacies located at 785 Tecumseh Road, Unit #16, Walpole Island ("**Walpole**") and 3A-1275 Walker Road, Windsor ("**Novacare**") and vesting all of the assets subject to those transactions free and clear of all liens and encumbrances, including any joint tenancy interest of CEDV Inc. ("**CEDV**"), in the Purchaser;

- (c) Assigning a lease (together with all renewals, the "**Novacare Lease**") between Dumopharm and Walker Plaza 1200 Inc. (the "**Novacare Landlord**") to the Purchaser; and
- (d) Sealing the confidential appendices to the Second Report (defined below).

## PART II – FACTS

2. The facts supporting this motion are set out in full detail in the Second Report of the Receiver, dated February 19, 2020 (the "**Second Report**"). Capitalized terms used herein and not otherwise defined have the meaning given to them in the Second Report.

3. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on December 4, 2019 (the "**Receivership Order**"), KSV was appointed Receiver.<sup>1</sup>

4. The principal purpose of the receivership proceedings is to allow the Company's four pharmacies (the "**Pharmacies**") (which are believed to be owned by Rando) and its physiotherapy clinic (which is believed to be owned by 2275 and operates as "**Abira**") to continue to operate while the Receiver works to complete a sale of some or all of these businesses on a going-concern basis.<sup>2</sup>

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<sup>1</sup> A copy of the Receivership Order is provided at Appendix "A" to the Second Report of KSV Kofman Inc. as Receiver, dated February 19, 2020 (the "**Second Report**"), Motion Record of the Receiver returnable February 26, 2020 (the "**Motion Record**"), Tab 2A.

<sup>2</sup> Second Report, section 1.0, para. 3, Motion Record, Tab 2.

5. The Company owns and operates four pharmacies in Southwestern Ontario under the PharmaChoice banner including Walpole and Novacare. Each pharmacy operates as a separate division of Rando. The other two Pharmacies are not the subject of this motion.<sup>3</sup>

### *Sale Process*

6. KSV was originally retained by the Company on July 31, 2019 to conduct a refinancing and sale process (“RSP”) for the Pharmacies. Several strong offers were submitted in that process. At the time, KSV believed the strongest offer had been submitted by Bidder Two. Ultimately, Mr. Diena, the Company’s principal, chose to pursue the offer submitted by Bidder One, which was not recommended by KSV and never closed.<sup>4</sup>

7. Given the wide canvassing and orderly marketing of the Pharmacies already performed by KSV under the RSP, the Receiver intended to re-approach the parties that submitted the best offers in the RSP. The Receiver intended to re-market the business and assets if parties did not express a continuing interest. The Court approved this approach pursuant to the Receivership Order.<sup>5</sup>

8. Upon its appointment, the Receiver contacted the Purchaser (referred to as Bidder Two above). The Purchaser advised the Receiver that it continued to have an interest; however, due to issues which came to light subsequent to the RSP that may affect a transaction, the Purchaser advised that it would only continue to have an interest at a lower price than its bid in the RSP. The Purchaser also advised that the structure of its bid would also have to reflect the risks in the transaction.<sup>6</sup>

9. Notwithstanding the reduction in the value of the Purchaser’s offer, the Receiver believes that the Purchaser’s offer remained attractive for the following reasons<sup>7</sup>:

- (a) it was not subject to a financing condition;

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<sup>3</sup> Second Report, section 2.0, paras. 2 and 3, Motion Record, Tab 2.

<sup>4</sup> Second Report, section 3.0, para. 1, Motion Record, Tab 2.

<sup>5</sup> Second Report, section 3.0, para. 2, Motion Record, Tab 2.

<sup>6</sup> Second Report, section 3.0, paras. 3 and 4, Motion Record, Tab 2.

<sup>7</sup> Second Report, section 3.0, paras. 5(a) to (f), Motion Record, Tab 2.

- (b) the Purchaser represented that it had completed substantially all its due diligence;
  - (c) the principal of the Purchaser is an experienced pharmacist who operates multiple pharmacies;
  - (d) the Purchaser is interested in all four Pharmacies and other assets;
  - (e) the total value of the Purchaser's offer exceeds the ECN debt; and
  - (f) the issues which caused the Purchaser to reduce the value of its offer would also cause all other bidders to also reduce their offer.
10. The Receiver and the Purchaser entered into the Original APA on December 18, 2019 which was amended by the Amendment, principally to extend certain condition dates.<sup>8</sup>

***The APA***

11. The APA provides for the sale of all four Pharmacies but contemplates that they may close separately. Other material terms of the APA are as follows:
- (a) Deposit: 10% upon execution. An additional sum of 5% of the Purchase Price (net of the Inventory Amount) (the "**Additional Deposit**") is to be paid to the Receiver, in trust, upon the earlier of (a) March 13, 2020; and (b) obtaining Landlord Approval.<sup>9</sup>
  - (b) Assets to be purchased: All of the Debtors' right, title and interest in and to substantially all of the business, assets and contracts of the Pharmacies, excluding accounts receivable, cash and cash equivalents, intercompany receivables, deposits, HST receivables, tax refunds, claims, insurance or insurance claims, and any contracts not specifically included in the Contracts.<sup>10</sup>

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<sup>8</sup> Second Report, section 3.0, para. 6, Motion Record, Tab 2.

<sup>9</sup> Second Report, section 4.0, para. 2(c), Motion Record, Tab 2.

<sup>10</sup> Second Report, section 4.0, para. 2(d), Motion Record, Tab 2.

- (c) “As is, where is”: The agreement is consistent with standard insolvency transactions, i.e. to be completed on an “as is, where is” basis with minimal representations, warranties and conditions.<sup>11</sup>
- (d) Conditions in favour of the Purchaser: The following are the material conditions in favour of the Purchaser:
- (ii) Landlord Approval – pursuant to the Amendment, on or before March 13, 2020, the Purchaser will have obtained consents by the landlords of the Leased Locations to assignments of the applicable leases, including options to extend for up to 10 years;<sup>12</sup>
  - (iii) Ontario College of Pharmacists (“**OCP**”) – on or before April 17, 2020, the Purchaser will have obtained a new certificate of accreditation by the OCP;<sup>13</sup>
  - (iv) Ontario Drug Benefit Plan (“**ODB**”) - on or before April 17, 2020, the Purchaser will have obtained new billing privileges for all Leased Locations under the ODB with the Ministry of Health (Ontario) and all third-party payors of the Leased Locations;<sup>14</sup> and
  - (v) Approval and Vesting Order – the obligations of the Receiver and Purchaser to complete the Transactions are subject to an order of the Court on or before May 8, 2020 approving the APA and the Transactions.<sup>15</sup>

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<sup>11</sup> Second Report, section 4.0, para. 2(g), Motion Record, Tab 2.

<sup>12</sup> Second Report, section 4.0, para. 2(h)(i), Motion Record, Tab 2.

<sup>13</sup> Second Report, section 4.0, para. 2(h)(ii), Motion Record, Tab 2.

<sup>14</sup> Second Report, section 4.0, para. 2(h)(iii), Motion Record, Tab 2.

<sup>15</sup> Second Report, section 4.0, para. 2(h)(iv), Motion Record, Tab 2.

12. At this time, negotiations with the Walpole landlord are in the final stages.<sup>16</sup> The treatment of the Novacare Lease is discussed below. The Purchaser requires certainty of the leases before it can proceed to clear its regulatory conditions.

### *Novacare Lease*

13. Rando occupies the Novacare pharmacy pursuant to the Novacare Lease. Pursuant to a co-tenancy agreement dated February 12, 2017, CEDV was added to the lease as a co-tenant. CEDV is believed to be owned or controlled by Mr. Diena.<sup>17</sup>
14. The Novacare Lease expired on December 31, 2019 but was renewed by Rando prior to the receivership. The Novacare Landlord's counsel has yet to provide a draft renewal but the assignment of the Novacare Lease would include all renewals including the current one. The Company provided the Receiver with an email confirming that it had exercised the renewal. The Company is continuing to occupy the Novacare premises.<sup>18</sup>
15. There are two issues relating to the Novacare Lease:
- (a) The "Joint Tenant": CEDV is an entity that financed certain leasehold improvements for the Novacare location with a loan from an entity other than ECN. CEDV's addition as a tenant to the lease was obtained in connection with this transaction. CEDV has not and does not occupy that location and the structure was purely financial in nature.<sup>19</sup>
  - (b) Landlord Consent to Assignment: The Novacare Landlord's counsel, Gatti Law Professional Corporation ("**Gatti**"), has refused to engage in discussions until the issue of the joint tenancy is addressed.<sup>20</sup> It has not accepted the co-tenant

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<sup>16</sup> Second Report, section 4.0, para. 3, Motion Record, Tab 2.

<sup>17</sup> Second Report, section 4.1, para. 1, Motion Record, Tab 2.

<sup>18</sup> Second Report, section 4.1, para. 2, Motion Record, Tab 2.

<sup>19</sup> Second Report, section 4.1, para. 3, Motion Record, Tab 2.

<sup>20</sup> Second Report, section 4.1, para. 4, Motion Record, Tab 2.

acknowledgement on behalf of CEDV on January 11, 2020 (the “**Co-tenancy Acknowledgement**”) which provides:

*“the Co-tenant will consent to any lease assignment recommended by the Receiver as part of a transaction and release any rights it may have as a Co-tenant and/or allow its interest to be vested out by a vesting order”.*<sup>21</sup>

### **PART III – ISSUE AND THE LAW**

16. The issues on this motion are whether (a) the Transactions should be approved; (b) the order for the Novacare Transaction should vest out the interest of CEDV; (c) the Novacare Lease should be assigned; and (d) whether the sealing order should be granted.

#### **A. The Walpole and Novacare Transactions Should be approved by this Court and the Vesting Orders Should be Granted**

17. The factors for the Court to consider in determining whether to approve the Walpole and Novacare Transactions are set out in *Royal Bank v. Soundair Corp* (“**Soundair**”) which states that the Court should consider: (a) whether sufficient efforts have been made to obtain the best price and the debtor has not acted improvidently; (b) whether the interests of all parties have been considered; (c) the integrity and efficacy of the process for obtaining officers; and (d) whether there was any unfairness in working out the process.<sup>22</sup> Courts generally grant deference and place a great deal of confidence in the receiver’s recommendation to sell the property of a debtor.<sup>23</sup>

18. The criteria set out in *Soundair* have been met for the following reasons:

- (a) The RSP was a full and robust process during which KSV canvassed a number of parties on an orderly basis over a significant period of time;<sup>24</sup>

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<sup>21</sup> Second Report, section 4.1, para. 5, Motion Record Tab 2.

<sup>22</sup> *Royal Bank v. Soundair Corp.* (1991) 4 O.R. (3d) 1 (C.A.), 1991 CanLII 2727 (ON C.A.), page 9, Commercial List Authorities Book

<sup>23</sup> *Royal Bank v. Soundair Corp.* (1991) 4 O.R. (3d) 1 (C.A.), 1991 CanLII 2727 (ON C.A.), page 8, Commercial List Authorities Book

<sup>24</sup> Second Report, section 4.5, para. 1(a), Motion Record, Tab 2.



- (b) the Purchaser participated in that process and submitted a bid which, at the time, KSV believed to be the strongest bid;<sup>25</sup>
- (c) the revised offer under the APA remains attractive for many reasons listed above;<sup>26</sup>
- (d) ECN, the Company's largest secured creditor, supports the Transactions;<sup>27</sup>
- (e) the value of the offer is significant – the APA needs to be closed in stages due largely to issues related to the Company's leases;<sup>28</sup>
- (f) the Purchaser's principal is knowledgeable about the pharmacy business. The Receiver understands that he directly or indirectly owns approximately 30 pharmacies and medical centers;<sup>29</sup>
- (g) the reduction in the value of the Transactions versus the offer submitted by the Purchaser in the RSP is justified due to the issues that have been identified since the completion of the RSP;<sup>30</sup>
- (h) the Transactions are expected to preserve employment for a substantial number of the Company's employees on terms similar to those currently in place;<sup>31</sup>
- (i) completion of the sale of Walpole and Novacare will reduce receivership costs and professional fees and can be completed outside of the transactions for Family Health East and Family Health West, the remaining two pharmacies;<sup>32</sup> and

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<sup>25</sup> Second Report, section 4.5, para. 3, Motion Record, Tab 2.

<sup>26</sup> Second Report, section 3.0, para. 5(a) to (f), Motion Record, Tab 2.

<sup>27</sup> Second Report, section 4.5, para. 1(c), Motion Record, Tab 2.

<sup>28</sup> Second Report, section 4.5, para. 1(d), Motion Record, Tab 2.

<sup>29</sup> Second Report, section 4.5, para. 1(e), Motion Record, Tab 2.

<sup>30</sup> Second Report, section 4.5, para. 1(f), Motion Record, Tab 2.

<sup>31</sup> Second Report, section 4.5, para. 1(g), Motion Record, Tab 2.

<sup>32</sup> Second Report, section 4.5, para. 1(h), Motion Record, Tab 2.

- (j) the Receiver does not believe that further time spent marketing the Company's business and assets will result in a superior transaction.<sup>33</sup>

19. Section 100 of the *Courts of Justice Act* provides authority to the Court to grant vesting orders.<sup>34</sup> Courts have held that the receivership court clearly has the authority to grant vesting orders pursuant to section 243(1) of the BIA.<sup>35</sup> There is no dispute that vesting orders may vest out monetary interests in property.

20. The "joint tenant" interest of CEDV was established purely for the purposes of financing leasehold improvements and not for any occupancy or other purposes.<sup>36</sup> CEDV has consented to the vesting out of its interest pursuant to the Vesting Orders.<sup>37</sup> In these circumstances, where (a) the "joint tenant" interest is a monetary interest, at best, and not a right in property or otherwise; and (b) the joint tenant has consented, it is appropriate for such interest to be vested out.

#### **B. The Novacare Lease should be assigned to the Purchaser**

21. Contracts may be vested to a purchaser of property pursuant to the terms of a vesting order. In situations where consent of a third party is required, both Section 84.1 of the BIA<sup>38</sup> and section 23 of the *Commercial Tenancies Act*<sup>39</sup> permit the Court to grant an order assigning a lease over the objection of the counterparty if certain conditions are met. In this case, there is no clear objection by the landlord to the assignment of its lease but an inability to engage until the proposed Order is obtained to clarify the situation.

22. Although Section 84.1 of the BIA addressed specifically the application of a trustee in bankruptcy, there is no policy reason why this provision could not be relied upon in motions within receiverships. The Alberta Court of Appeal has held that the s. 84.1 "should be interpreted in light of Parliament's intention that the provision be used to protect and enhance the assets of the estate

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<sup>33</sup> Second Report, section 4.5, para. 1(i), Motion Record, Tab 2.

<sup>34</sup> *Courts of Justice Act*, R.S.O. 1990, c. C.43, section 100.

<sup>35</sup> *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2019 ONCA 508, at para. 87, Brief of Authorities of the Receiver (the "Receiver's BoA"), Tab 1

<sup>36</sup> Second Report, section 4.1, para. 3, Motion Record, Tab 2.

<sup>37</sup> Second Report, section 4.1, para. 3, Motion Record, Tab 2.

<sup>38</sup> *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, section 84.1.

<sup>39</sup> *Commercial Tenancies Act*, R.S.O. 1990, c. L.7, section 23.

of a bankrupt by permitting the sale/assignment of existing agreements to third parties for value.”<sup>40</sup> That court noted that “[s]ometimes the most valuable property in an estate will be the contractual rights possessed by the bankrupt as of the date of bankruptcy”<sup>41</sup>, and that “the clear intent of Parliament in enacting s. 84.1 of the BIA was...a policy decision that a court ought to have the discretion to authorize a trustee to assign (sell) the rights and obligations of a bankrupt under such an agreement notwithstanding the objections of a counter-party.”<sup>42</sup>

23. This policy decision compliments the purpose and powers of the Receiver who was appointed under s. 243 of the BIA. In the recent case of *Third Eye Capital Corporation*, the Court of Appeal for Ontario reiterated that the purpose of such a receivership is to “enhance and facilitate the preservation and realization of assets for the benefit of creditors” and that the receiver’s “primary task is to ensure that the highest value is received for the assets so as to maximise the return to the creditors.”<sup>43</sup>

24. If section 84.1 were not available within receiverships, a receivership would be the only proceeding which would not be able to avail itself of such remedy. There is ample caselaw that suggests that unless there is a reason otherwise, insolvency statutes should be interpreted to minimize inconsistencies.<sup>44</sup> Accordingly, it would be contrary to the policy decisions behind both ss. 84.1 and 243 if the Receiver was unable to assign the Novacare Lease and realize the highest value for creditors in this proceeding.

25. The Novacare Lease should be assigned to the Purchaser for the following reasons<sup>45</sup>:

- (a) The Purchaser is a pharmacist operating approximately 30 locations, the majority of which have been operating for ten years and more;
- (b) The Purchaser satisfied due diligence performed by the Walpole landlord;

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<sup>40</sup> *Ford Credit Canada Ltd. v. Welcome Ford Sales Ltd.*, 2011 ABCA 158, at para. 36, Receiver’s BoA, Tab 2.

<sup>41</sup> *Ford Credit Canada Ltd. v. Welcome Ford Sales Ltd.*, 2011 ABCA 158, at para. 38, Receiver’s BoA, Tab 2.

<sup>42</sup> *Ford Credit Canada Ltd. v. Welcome Ford Sales Ltd.*, 2011 ABCA 158, at para. 39, Receiver’s BoA, Tab 2.

<sup>43</sup> *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2019 ONCA 508, at para. 73, Receiver’s BoA, Tab 1.

<sup>44</sup> *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, Receiver’s BoA, Tab 3.

<sup>45</sup> Second Report, section 4.1, paras. 9 (a) to (f), Motion Record, Tab 2.

- (c) The Receiver has no reason to believe the Purchaser cannot or will not perform its obligations under the Novacare Lease;
- (d) Pursuant to the terms of the Novacare Lease the Novacare Landlord may not unreasonably withhold its consent to assignment of the lease.<sup>46</sup> Neither the Novacare Landlord nor Gatti have indicated they have any concerns with the Purchaser itself and in fact have indicated they are “happy” to discuss the Novacare location with the Purchaser once the certainty of the tenant/co-tenant arrangement is addressed
- (e) There are no outstanding monetary defaults under the Novacare Lease of which the Receiver is aware; and
- (f) The assignment of the Novacare Lease is a key condition for that sale – without the Novacare Lease, the Transaction for that location will not close.

### **C. The Confidential Appendices Should Be Sealed**

26. Pursuant to Section 137(2) of the *Courts of Justice Act*,<sup>47</sup> the Court may seal documents. The test for sealing documents as set out in *Sierra Club of Canada v. Canada (Minister of Finance)* is as follows: (a) the order is necessary to prevent risk to an important interest, including a commercial interest, because reasonable alternative measures will not prevent the risk; and (b) the salutary effects of the order outweigh the deleterious effects.<sup>48</sup>

27. The Confidential Appendices to the Second Report contain sensitive commercial information regarding the extent of interest of parties in the RSP, the price being paid by the Purchaser under the APA and other information which, if made public, could negatively impact any future sale of the business or put other portions of the transactions contemplated by the APA at risk.<sup>49</sup>

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<sup>46</sup> Section 11.1 of the Novacare Lease, Appendix “D” to the Second Report, Motion Record, Tab 2D.

<sup>47</sup> *Courts of Justice Act*, R.S.O. 1990, c. C.43, section 137(2).

<sup>48</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522, Commercial List Authorities Book.

<sup>49</sup> Second Report, section 4.6, para. 1, Motion Record, Tab 2.

28. No stakeholder is being prejudiced by the sealing of this information.

**PART IV – NATURE OF THE ORDER SOUGHT**

29. The Receiver therefore requests Orders substantially in the form filed with its motion record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 22<sup>th</sup> day of February 2020.

Goldman Sachs Wash; Haber LLP

## SCHEDULE A – LIST OF AUTHORITIES

1. *Royal Bank v. Soundair Corp.*, (1991) 4 O.R. (3d) 1 (C.A.)
2. *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2019 ONCA 508
3. *Ford Credit Canada Ltd. v. Welcome Ford Sales Ltd.*, 2011 ABCA 158
4. *Century Services Inc. v. Canada* (Attorney General), 2010 SCC 60, [2010] 3 S.C.R. 379
5. *Sierra Club of Canada v. Canada* (Minister of Finance), [2002] 2 S.C.R. 522

## SCHEDULE B – RELEVANT STATUTES

*Bankruptcy and Insolvency Act*, RSC 1985, c B-3

### **Assignment of agreements**

**84.1 (1)** On application by a trustee and on notice to every party to an agreement, a court may make an order assigning the rights and obligations of a bankrupt under the agreement to any person who is specified by the court and agrees to the assignment.

**(4)** In deciding whether to make the order, the court is to consider, among other things,

**(a)** whether the person to whom the rights and obligations are to be assigned is able to perform the obligations; and

**(b)** whether it is appropriate to assign the rights and obligations to that person.

*Courts of Justice Act*, R.S.O. 1990, c. C.43,

### **Vesting orders**

**100.** A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

### **Sealing documents**

**137 (2)** A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

*Commercial Tenancies Act*, R.S.O. 1990, C. L.7

### **Licence to assign not to be unreasonably withheld**

**23. (1)** In every lease made after the 1st day of September, 1911, containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that such licence or consent is not to be unreasonably withheld.

**Application to court where consent to assignment or subletting withheld**

(2) Where the landlord refuses or neglects to give a licence or consent to an assignment or sub-lease, a judge of the Superior Court of Justice, upon the application of the tenant or of the assignee or sub-tenant, made according to the rules of court, may make an order determining whether or not the licence or consent is unreasonably withheld and, where the judge is of opinion that the licence or consent is unreasonably withheld, permitting the assignment or sub-lease to be made, and such order is the equivalent of the licence or consent of the landlord within the meaning of any covenant or condition requiring the same and such assignment or sub-lease is not a breach thereof.



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Applicant

Respondents

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Proceeding commenced TORONTO

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