

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)

THE HONOURABLE) FRIDAY, THE 28TH
)
JUSTICE CONWAY) DAY OF APRIL, 2023

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED

IN THE MATTER OF THE PROPOSAL OF KUK-ILL JOHN KIM

AND IN THE MATTER OF THE PROPOSAL OF MYOUNG-JA MARY KIM

APPROVAL AND VESTING ORDER

THIS MOTION, originally returnable April 17, 2023, made by Kuk-Ill John Kim and Myoung-Ja Mary Kim (collectively, the “**Debtors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Debtors and Joseph Messina, in trust for a company to be incorporated (the “**Purchaser**”) dated February 18, 2023 and appearing as **Exhibit “M”** to the Affidavit of Silver Stephen Kim sworn on April 10, 2023 (the “**Silver Affidavit**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the real property, municipally known as 385 Spadina Road, Toronto, Ontario, as more particularly described in the Sale Agreement (the “**Purchased Asset**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Debtors, including the Silver Affidavit and the exhibits thereto, the fifth report of Albert Gelman Inc. (“**AGI**”, and in its capacity as proposal trustee, the “**Proposal Trustee**”) dated April 11, 2023, and the appendices thereto, and the Supplementary Report to the Fifth Report dated April 24, 2023, and the appendices thereto, and on hearing the submissions of counsel for the Debtors and such other counsel as were present as

listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the Lawyer's Certificate of Service dated April 12, 2023 filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtors is hereby authorized and approved, with such minor amendments as the Debtors may deem necessary. The Debtors and the Proposal Trustee are 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 Asset to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Proposal Trustee's Certificate**") all of the Debtors' right, title and interest in and to the Purchased Asset described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in Messina's In The Village Ltd., 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 Conway dated April 28, 2022; (ii) any monetary claims for loss or damage by any person as a result of any environmental contamination arising on or before the date of this Order, including those claimed in the proceedings commenced by Lee-Mar Development Limited bearing Court File No. CV-09-380822 and by Bosung Investment Inc., Byoung Ok Han and Jae Yol Han bearing Court File No. CV-14-00516260-0000; 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 that all of the Encumbrances affecting or relating to the Purchased Asset are hereby expunged and discharged as against the Purchased Asset, provided that nothing in this Order shall be taken to affect any duties or obligations imposed on any person pursuant to any environmental protection laws or regulations, including, without limitation, the *Environmental Protection Act*, RSO 1990, c E19, as amended, and, further, that nothing in this Order shall bar, prevent, limit, extinguish,

prohibit, or restrict any person or entity from commencing a claim against the owner of the Purchased Asset on the basis of environmental contamination originating or traveling from that property after the date of the delivery of the Proposal Trustee's Certificate.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto 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 for the Land Registry Office for the Land Titles Division of Toronto is hereby directed to enter Messina's In The Village Ltd. as the owner of the Purchased Asset in fee simple, and is hereby directed to delete and expunge from title to the Purchased Asset 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 Asset shall stand in the place and stead of the Purchased Asset, and that from and after the delivery of the Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Asset with the same priority as they had with respect to the Purchased Asset immediately prior to the sale, as if the Purchased Asset 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 Proposal Trustee is to file with the Court a copy of the Proposal Trustee'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 Asset 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 Debtors, the Proposal Trustee and their 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 Debtors, the Proposal Trustee, as may be necessary or desirable to give effect to this Order or to assist the Debtors, the Proposal Trustee and their agents in carrying out the terms of this Order.

GENERAL

8. **THIS COURT FURTHER ORDERS** that notwithstanding Rule 59.05, this Order is effective from 12:01am on the date that it is made and is enforceable without any need for entry and filing.

A handwritten signature in blue ink is written over a horizontal line. The signature appears to be "Conway J." with a stylized flourish at the end.

Schedule A – Form of Proposal Trustee’s Certificate

Court File No. 31-2822607
Estate File No. 31-2822607

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED**

IN THE MATTER OF THE PROPOSAL OF KUK-ILL JOHN KIM

AND IN THE MATTER OF THE PROPOSAL OF MYOUNG-JA MARY KIM

PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

A. On April 19, 2022, pursuant to a Certificate of Filing of a Notice Intention to make a Proposal made under Part III, Division 1, of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended, Albert Gelman Inc. was appointed as the proposal trustee (the “**Proposal Trustee**”) of the proposals made by Kuk-Ill John Kim and Myoung-Ja Mary Kim (collectively, the “**Debtors**”).

B. On October 18, 2022, the Debtors filed proposals, respectively, with the Official Receiver of Office of the Superintendent of Bankruptcy Canada.

B. Pursuant to an Order of the Court dated April 28, 2023, the Court approved the agreement of purchase and sale made as of February 18, 2023 (the “**Sale Agreement**”) between the Debtors and Joseph Messina, in trust for a company to be incorporated (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Asset, which vesting is to be effective with respect to the Purchased Asset upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming it has been advised

by the Debtors and the Purchaser that (i) the payment by the Purchaser of the Purchase Price for the Purchased Asset; (ii) that the conditions to Closing as set out in Schedule “A” of the Sale Agreement have been satisfied or waived by the Debtors and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Debtors and the Purchaser.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES that it has been advised by the Debtors and the Purchaser of the following:

1. The Purchaser has paid and the Debtors have received the Purchase Price for the Purchased Asset payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Schedule “A” of the Sale Agreement have been satisfied or waived by the Debtors and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Debtors and the Purchaser.
4. This Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

**ALBERT GELMAN INC., in its capacity as
Proposal Trustee for KUK-ILL JOHN KIM
and MYOUNG-JA MARY KIM, and not in
its personal capacity**

Per:

Name:

Title:

Schedule B – Purchased Asset

LT 32 PL 861 FOREST HILL; PT LT 31 PL 861 FOREST HILL PT 1 & 3, 64R14057;
SUBJECT TO AN EASEMENT OVER PART 3 PLAN 64R14057 IN FAVOUR OF PART 2
PLAN 64R14057 AS IN CA264699; CITY OF TORONTO, being all of PIN 21188-0135 (LT)

Schedule C – Claims to be deleted and expunged from title to Real Property

nil

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

- (a) **Instrument No. 64R14057** registered on December 9, 1993, being a Reference Plan;
- (b) **Instrument No. CA264699** registered on February 7, 1994, being a Transfer of Easement in favour of Part 2 on Plan 64R-14057; and
- (c) **Instrument No. AT2951115** registered on February 23, 2012, being a Land Registrar's Order to Amend the legal description of the Property.

**IN THE MATTER OF THE PROPOSAL OF KUK-ILL
JOHN KIM et. al.**

Court File No. BK-22-02322607-0031
Estate File No. 31-2822607

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

Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER

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