



ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE) TUESDAY, THE 16TH
JUSTICE)
) DAY OF FEBRUARY, 2016

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**ABINGDON MEAT PACKERS LIMITED and
DESIMONE INVESTMENTS LIMITED**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Albert Gelman Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Abingdon Meat Packers ("AMPL") Limited and Desimone Investments Limited ("DIL") (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 Receiver and a purchaser to be disclosed to the Court (the "Purchaser") dated December 23, 2015 and appended to the Confidential Second Report of the Receiver dated January 12, 2016 (the "Confidential Second Report"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 80 Dundas Street, London, Ontario.

ON READING the Second Report of the Receiver dated January 12, 2016 and the Confidential Second Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Cathy Coleiro sworn January 13, 2016 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.

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 of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement and the Real Property listed on Schedule B hereto 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 Miller dated May 26, 2015; (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 that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Niagara North (No. 30) 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 subject real property identified in Schedule B hereto (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 and the bankruptcy of AMPL;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of DIL and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of DIL;

the vesting of the 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 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.

7. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario) and the Transaction may be completed without compliance with:

- (a) the provisions of the Mortgages Act, R.S.O. 1990, c. M-40 as amended;
- (b) section 244(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "BIA"); or,
- (c) provisions of Part V of the Personal Property Security Act, RSO 1990, c. P. 10 as amended (the "PPSA"),

or any other notice, requirement, statutory or otherwise which a creditor or other party may be required to issue in order to dispose of the collateral of the Debtors.

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.

A handwritten signature in blue ink, appearing to read "Lynne G. Justice", is written over a horizontal line.

Justice, Ontario Superior Court of Justice –
in Bankruptcy and Insolvency

Schedule A – Form of Receiver’s Certificate

Court File No. 35-1799420T

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- and -

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Miller of the Ontario Superior Court of Justice (the "Court") dated May 28, 2015, Albert Gelman Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Abingdon Meat Packers ("AMPL") Limited and Desimone Investments Limited ("DIL") (collectively the "Debtors").

B. Pursuant to an Order of the Court dated February 16, 2016 the Court approved the agreement of purchase and sale made as of December 23, 2015 (the "Sale Agreement") between the Receiver and 2492423 Ontario Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, 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.

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 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; 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].

Albert Gelman Inc., in its capacity as Receiver of the undertaking, property and assets of Abingdon Meat Packers Limited and Desimone Investments Limited , and not in its personal capacity

Per: _____
Name:
Title:

Schedule B – Purchased Assets

Real Property

Pt Lt 15 Con 4 Caistor Pts 1, 2, 3, 4, 30R876 Except Pts 1, 2, 3, 30R4290 & Pt 1, 30R7032; S/T CS 9886;
West Lincoln (PIN 46065-0008)

All equipment, trucks and trailers, and office equipment as described in the Sale Agreement

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

Real Property Claims

Instrument NR125214 - Charge registered in favour of the Bank of Montreal on December 5, 2006.

Instrument NR125217 - Notice of General Assignment of Rents registered in favour of the Bank of Montreal on December 5, 2006

Instrument NR382218 - Court Order registered in favour of Albert Gelman Inc. on May 28, 2015

Personal Property Security Act Registrations

Reference File No. 629821098 registration in favour of the Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle included

Reference File No. 629847153 registration in favour of the Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle included - collateral description: General Assignment of Rents – 1607 Abingdon Road, Caistor Centre, Ontario L0R 1E0

Reference File No. 630101358 registration in favour of the Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle included - general collateral description: Corporate Guarantee of Indebtedness of Abingdon Meat Packers Ltd.

Reference File No. 685002744 registration in favour of CNH Capital Canada Ltd. with respect to equipment and motor vehicle - motor vehicle description: 2012 CaseIH 110 Pro bearing VIN ZCBE03474. With a general collateral description: 2012 CaseIH L745 Loaders, serial number YCWLH5136

Reference File No. 701630469 in favour of O'Neil's Farm Equipment (1971) Ltd. with respect to equipment - general collateral description: CaseIH 2012 Maxxum 110 bearing serial number ZCBE03474. Work Order Number 43661A repair tractor damage from truck backing into it as well as supply rental tractor while their tractor was in for repair

Reference File No. 701630478 in favour of O'Neil's Farm Equipment (1971) Ltd. with respect to equipment - general collateral description: John Deere 1518 Rotary Cutter Mower bearing serial number 1518F009899. Work Order Number 43998A to repair drive line and gear box per customer and replace damaged gear box

Reference File No. 629821107 registration in favour of Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle

Reference File No. 629845038 registration in favour of Bank of Montreal with respect to inventory, equipment, accounts, other and motor vehicle – Corporate Guarantee of Indebtedness of Desimone Investments Limited

Reference File No. 682623441 registration in favour of Penske Truck Leasing Canada Inc. with respect to equipment, other, motor vehicle (2013 Freightliner M2, VIN 1FVACYDT7DHFJ2089; 2013 Freightliner M2, VIN 1FVHCYBS2DHFJ2090) (together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, including, but not limited to, Xata and Qualcomm systems, and all proceeds in any form derived directly or indirectly from any sale and or dealing with the collateral and

· a right to an insurance payment or other payment that indemnifies or compensates for loss or damage to the collateral or proceeds of the collateral)

Reference File No. 683126991 registration in favour of Penske Truck Leasing Canada Inc. with respect to equipment, other, motor vehicle (2013 Freightliner X12564ST, VIN 1FUJGEDR1DLFF3385) (together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements thereto, including, but not limited to, Xata and Qualcomm systems, and all proceeds in any form derived directly or indirectly from any sale and or dealings with the collateral and a right to an insurance payment or other payment that indemnifies or compensates for loss or damage to the collateral or proceeds of the collateral)

Bank Act Registrations

Registration numbered 01270400 and dated January 3, 2012 in favour of Bank of Montreal

Registration numbered 01279354 and dated November 8, 2012 in favour of Bank of Montreal

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

(unaffected by the Vesting Order)

Instrument CS9886 - Easement in favour of the Hydro Electric Power Comm of Ontario registered March 18, 1952

Instrument 30R876 - Reference Plan registered June 27, 1974

Instrument RO657597 - Site Plan Agreement registered in favour of the Township of West Lincoln on November 5, 1992.

Instrument RO695089 - Site Plan Agreement registered in favour of the Corporation of the Township of West Lincoln on April 27, 1995.

Instrument NR50469 - Notice registered in favour of Desimone Investments Limited on December 21, 2004

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PROCEEDING COMMENCED AT
LONDON

ORDER

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TCH/162431