



ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE *Mr. Justice Perry*) TUESDAY, THE 12th
JUSTICE) DAY OF AUGUST, 2015
)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

BEAVERTON LUMBER INC.

Respondent

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 Beaverton Lumber Inc. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Ben Smith, in trust for a company to be incorporated and subsequently assigned to 1936574 Ontario Ltd. (the "Purchaser") dated May 15, 2015, and appended to the Report of the Receiver dated July 30, 2015 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report, the Confidential Report of Albert Gelman Inc. in its capacity as Court-Appointed Receiver dated July 30, 2015 (the "Confidential Report"), and the affidavits of the Receiver and its counsel as to fees (the "Fee Affidavits") and on hearing the submissions of counsel for the Receiver and all other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Nadia Gatta sworn July 31, 2015 filed:

1. THIS COURT ORDERS that the Report and the Confidential Report and the Receiver's conduct as set out in the Report and the Confidential Report are hereby approved.

2. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Report and the Fee Affidavits, are hereby approved.

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 Purchased Assets to the Purchaser.

4. 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 Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement 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 McEwen dated June 17, 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.

5. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Durham (No. 40) 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, being 1936574 Ontario Ltd., whose address for service shall be 488 Mara Road, Beaverton, Ontario L0K 1A0, 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.

6. 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.

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, 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 Company's records pertaining to the Debtor's 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 Debtor.

9. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

- (b) the Debtor having made an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (Canada) appointing Albert Gelman Inc. as Trustee in Bankruptcy (in such capacity, the “**Trustee in Bankruptcy**”); and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on the Trustee in Bankruptcy 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.

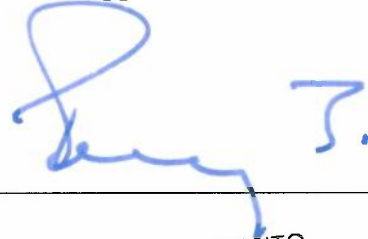
10. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

11. 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.

12. THIS COURT ORDERS that the Confidential Report and all appendices to the Confidential Report shall be segregated from the other documents filed in connection with this motion and shall be sealed in the court file and shall not be opened for a period of thirty (30) days after the Receiver has filed the Receiver’s Certificate referred to in this Order or until further order of this Honourable Court.

13. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands as follows:

- (a) the amount owing for property taxes as indicated in the records of The Corporation of the Township of Brock to a maximum of \$154,616.33 to The Corporation of the Township of Brock; and
- (b) the balance to a maximum of \$638,606.28 plus accrued interest from July 16, 2015, to the date of the distribution made to the Applicant.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 12 2015

MB

Schedule A – Form of Receiver’s Certificate

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

PLAINTIFF

Plaintiff

- and -

DEFENDANT

Defendant

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor’s 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 section ●

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. 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 section ● of 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].

[NAME OF RECEIVER], in its capacity as Receiver of the undertaking, property and assets of [DEBTOR], and not in its personal capacity

Per: _____
Name:
Title:

Schedule B – Purchased Assets

PIN 72044-0008 (LT)

PT LT 13 CON 6 THORAH, PT 1, 40R16362; BROCK

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

Instrument No. D457255 being a Transfer

Instrument No. D457256 being a Charge

Instrument No. DR886850 being a Notice

Instrument No. DR890590 being a Charge

Instrument No. DR1251765 being a Lien

Instrument No. DR1376530 being an Application Court Order

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

(unaffected by the Vesting Order)

Instrument No. 40R16362

THE TORONTO-DOMINION BANK
Applicant

-and- BEAVERTON LUMBER INC.
Respondent

Court File No. CV-15-10978-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Albert Gelman Inc.