Court File No. CV-15-11061-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST
IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT,* R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED

THE HONOURABLE Madam	)	TUESDAY, THE 3rd
JUSTICE Swinton	)	DAY OF MAY, 2016
	)	

B E T W E E N:

LORI EISEN, DAVID FEIG, EDWARD GOLDBERG, ZIPORA GOLDBERG, RIWKA GREENBERG, KEMPSTON GROVE CORP., SAM KISHENIVSKY, ALICE KOMINEK, DIANE KOMINEK, IVAN KOMINEK, STEPHEN KOMINEK, DAVID LAZAR, ANNA ORZAKOVSKI, FRAN SUSSMAN AND SAM SUSSMAN

Applicants

- and –

FISHERMEN'S PIER INC., MICHAEL SLATTERY, HOME TRUST COMPANY, BEST FUNDING CORPORATION, THE BANK OF NOVA SCOTIA TRUST COMPANY, ERNEST WOOD, MARLENE UNDERWOOD, PHYLLIS KORMAN, ROBERT SINGER, JUDY SINGER, ROBIN DANIELS, AND 1337997 ONTARIO LTD.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by ROSEN GOLDBERG INC. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertakings, property and assets of FISHERMEN'S PIER 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 Roger White and Pamela Kerry Hillier, as joint tenants (the "**Purchaser**") dated March 12, 2016 and appended to the First Report of the Receiver dated April 22, 2016 (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 and on hearing the submissions of counsel for the Receiver, and counsel for the applicant(s), the respondent(s), and PRO ICF Inc., no one appearing for any other person on the service list, although properly served as appears from the affidavit of service 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 Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement [and 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 Hainey dated October 14, 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 Titles Division of Hamilton Wentworth (LRO No. 62) of an Application for Vesting Order in the form prescribed by the *Land Titles 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;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; 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 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).

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.

K. Smith J.

Schedule A – Form of Receiver's Certificate

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BETWEEN:

LORI EISEN, DAVID FEIG, EDWARD GOLDBERG, ZIPORA GOLDBERG, RIWKA GREENBERG, KEMPSTON GROVE CORP., SAM KISHENIVSKY, ALICE KOMINEK, DIANE KOMINEK, IVAN KOMINEK, STEPHEN KOMINEK, DAVID LAZAR, ANNA ORZAKOVSKI, FRAN SUSSMAN AND SAM SUSSMAN

Applicants

- and –

FISHERMEN'S PIER INC., MICHAEL SLATTERY, HOME TRUST COMPANY, BEST FUNDING CORPORATION, THE BANK OF NOVA SCOTIA TRUST COMPANY, ERNEST WOOD, MARLENE UNDERWOOD, PHYLLIS KORMAN, ROBERT SINGER, JUDY SINGER, ROBIN DANIELS, AND 1337997 ONTARIO LTD.

Respondents

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Hainey of the Ontario Superior Court of Justice (the "**Court**") dated October 14, 2015, ROSEN GOLDBERG INC. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of FISHERMEN'S PIER INC. (the "**Debtor**").

B. Pursuant to an Order of the Court dated May 3, 2016, the Court approved the agreement of purchase and sale made as of the 12th day of March, 2016 (the "**Sale Agreement**") between the Receiver and Roger White and Pamela Hillier (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 Schedules A and B (pages 6-

10), as amended, 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 Schedules A and B (pages 6-10), as amended, 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 _____a.m./p.m. on _____, 2016

ROSEN GOLDBERG INC, in its capacity as Receiver of the undertakings, property and assets of FISHERMEN'S PIER INC., and not in its personal or corporate capacity

Per: _____

Name: Brahm Rosen

Title: President

Schedule B – Purchased Assets

1. **PIN 17568–0408 (LT)**

PART OF BURLINGTON BEACH EAST SIDE BEACH BLVD (UNREGISTERED) BEING PART 5 ON 62R19672; S/T EASEMENT AS IN WE915190; SUBJECT TO AN EASEMENT IN GROSSOVER PTS 3 & 4 ON 62R19467 AS IN WE915193; CITY OF HAMILTON

Being all of PIN 17568–0408 (LT)

Land Titles Division for the Land Registry Office of Hamilton Wentworth (No. 62)

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

REGISTRATIONS TO BE DELETED FROM PIN 17568-0408 (LT):

1. Instrument No. WE885609 registered 2013/03/01 – Charge from Fishermen's Pier Inc. in favour of Merk Investments Ltd., Robert Singer, Judy Singer, David Goldman, Fran Sussman, Sam Sussman, Lori Eisen, Eddy Goldberg, Zipora Goldberg, Ivan Kominek, Alice Kominek, Stephen Kominek, Diane Kominek, Kempston Grove Corp., David Lazar, David Feig, Anna Orzakovski, Riwka Greenberg, Sam Kishenivsky, and Stanbarr Services Limited

2. Instrument No. WE891545 registered 2013/04/10 – Transfer of Charge from Merk Investments Ltd. in favour of Stanbarr Services Limited and Merk Investments Ltd.

3. Instrument No. WE891845 registered 2013/04/12 – Transfer of Charge from Merk Investments Ltd. in favour of Merk Investments Ltd. and Phyllis Korman

4. Instrument No. WE892335 registered 2013/04/15 – Transfer of Charge from David Goldman in favour of Merk Investments Ltd.

5. Instrument No. WE897168 registered 2013/05/13 – Transfer of Charge from Merk Investments Ltd. in favour of Kempston Grove Corp. and Robin Daniels

6. Instrument No. WE897891 registered 2013/05/16 – Transfer of Charge from Stanbarr Services Ltd. In favour 1337997 Ontario Ltd.

7. Instrument No. WE915192 registered 2013/08/08 – Postponement from Merk Investments Ltd., Robert Singer, Judy Singer, David Goldman, Fran Sussman, Sam Sussman, Lori Eisen, Eddy Goldberg, Zipora Goldberg, Ivan Kominek, Alice Kominek, Stephen Kominek, Diane Kominek, Kempston Grove Corp., David Lazar, David Feig, Anna Orzakovski, Riwka Greenberg, Sam Kishenivsky and Stanbarr Services Limited in favour of Cogeco Cable Canada GP Inc.

8. Instrument No. WE915194 registered 2013/08/08 – Postponement from Best Funding Corporation, The Bank of Nova Scotia Trust Company, Ernest Wood and Marlene Underwood to Horizon Utilities Corporation

9. Instrument No. WE915195 registered 2013/08/08 - Postponement from Merk Investments Ltd., Robert Singer, Judy Singer, David Goldman, Fran Sussman, Sam Sussman, Lori Eisen, Eddy Goldberg, Zipora Goldberg, Ivan Kominek, Alice Kominek, Stephen Kominek, Diane Kominek, Kempston Grove Corp., David Lazar, David Feig, Anna Orzakovski, Riwka Greenberg, Sam Kishenivsky and Stanbarr Services Limited in favour of Horizon Utilities Corporation;

10. Instrument No. WE936702 registered on 2013/11/26 – Transfer from Fishermen's Pier Inc. to Fishermen's Pier Inc.

11. Instrument No. WE949371 registered on 2014/02/12 – Charge from Fishermen's Pier Inc. in favour of Home Trust Company;

12. Instrument No. WE949405 registered 2014/02/13 – Postponement from Robert Singer, Judy Singer, Fran Sussman, Sam Sussman, Lori Eisen, Eddy Goldberg, Zipora Goldberg, Ivan Kominek, Alice Kominek, Stephen Kominek, Diane Kominek, Kempston Grove Corp., David Lazar, David Feig, Anna Orzakovski, Riwka Greenberg, Sam Kishenivsky 1337997 Ontario Ltd., Phyllis Korman and Robin Daniels in favour of Home Trust Company; and

13. Instrument No. WE949448 registered 2014/02/13 – Charge from Fishermen's Pier Inc. in favour of Best Funding Corporation, The Bank of Nova Scotia Trust Company, Ernest Wood and Marlene Underwood;

14. Instrument No. WE1053489 registered 2015/07/28 – Lien from Her Majesty the Queen in Right of Canada as Represented by The Minister of National Revenue

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

(unaffected by the Vesting Order)

REGISTRATIONS TO BE PERMITTED ON PIN 17568-0408 (LT):

1. Instrument No. WE915190 registered 2013/08/08 – Transfer Easement in favour of Cogeco Cable Canada GP Inc.;

2. Instrument No. WE915193 registered 2013/08/08 – Transfer Easement in favour of Horizon Utilities Corporation;

3. Instrument No. 62R19672 registered 2013/10/28 – Plan Reference