

THIS MOTION, made by Rosen Goldberg Inc. in its capacity as Court-appointed receiver (the "Receiver") of the lands and premises registered in the name of the Respondent, 189 Dundas Street West Inc. (the "Debtor"), municipally known as 189 Dundas Street West, Mississauga, Ontario (the "Real Property") and the remaining assets and undertaking of the Debtor acquired for or used in relation to the Real Property (together with the Real Property, the "Property") for an order approving the sale transaction (the "Transaction") contemplated by an

APPROVAL AND VESTING ORDER

Respondent

189 DUNDAS STREET WEST INC.

-and-

Applicant

WEST END MOTORS AND TRAILER PARK LIMITED

B E T W E E N:

DAY OF FEBRUARY, 2020

)

JUSTICE DIETRICH

)

THURSDAY, THE 27TH

)

THE HONOURABLE

IN THE MATTER OF SECTION 47(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

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

Court File No. CV-18-601159-CL



agreement of purchase and sale between the Receiver and 2723718 Ontario Ltd. (incorrectly identified therein as 2723718 Ontario Inc.) (the "Purchaser") dated January 27, 2020 (the "Sale Agreement"), as subsequently amended by an amendment agreement dated February 26, 2020 (the "Amendment"), vesting in the Purchaser the Debtor's right, title and interest in the Property, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Receiver dated February 19, 2020 (the "Second Report"), the Supplementary Second Report dated February 26, 2020 (the "Supplementary Second Report"), and on hearing the submissions of counsel for the Receiver, counsel for the Debtor, counsel for West End Motors and Trailer Park Limited, and counsel for Quincy Investments Limited, 969592 Ontario Limited and 969593 Ontario Limited, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Janet Nairne sworn February 19, 2020 and the affidavit of Richard Schuett sworn February 26, 2020, filed,

1. THIS COURT ORDERS AND DECLARES that the time for service of the Notice of Motion and Motion Record, including the Second Report and the Supplementary Second Report, is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement and the Amendment 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 Property to the Purchaser.

3. 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 Property (more particularly described in the Sale Agreement and Schedule "B" hereto), shall vest absolutely in the Purchaser, or its designees, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or

(a) the pendency of these proceedings;

7. THIS COURT ORDERS that, notwithstanding:

the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of

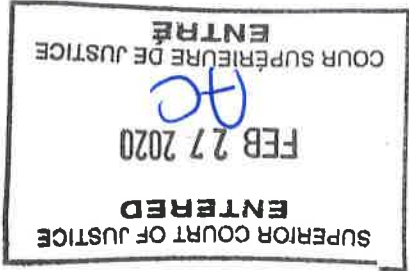
or control immediately prior to the sale.

had not been sold and remained in the possession or control of the person having that possession priority as they had with respect to the Property immediately prior to the sale, as if the Property Encumbrances shall attach to the net proceeds from the sale of the Property with the same Property, and that from and after the delivery of the Receiver's Certificate all Claims and Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the THIS COURT ORDERS that for the purposes of determining the nature and priority of

Schedules "C1" and "C2" hereto.

directed to delete and expunge from title to the Real Property all of the Claims listed in of the Real Property, in fee simple, legally described in Schedule "B" hereto, and is hereby by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner Land Registry Office of Peel (No. 43) of an Application for Vesting Order in the form prescribed 4. THIS COURT ORDERS that upon the registration in the Land Titles Division for the

relating to the Property are hereby expunged and discharged as against the Property. "D") and, for greater certainty, this Court orders that all of the Encumbrances affecting or include the permitted encumbrances, easements and restrictive covenants listed on Schedule hereto (all of which are collectively referred to as the "Encumbrances", which term shall not personal property registry system; and (iii) those Claims listed on Schedules "C1" and "C2" evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other Honourable Justice McEwen dated May 3, 2019; (ii) all charges, security interests or claims the generality of the foregoing: (i) any encumbrances or charges created by the Order of the whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting monetary claims, whether or not they have attached or been perfected, registered or filed and



Dimitri J.

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.

applicable federal or provincial legislation.

the vesting of the Property 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.

- (c) any assignment in bankruptcy made in respect of the Debtor;
- (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

Schedule "A"

Form of Receiver's Certificate

Court File No. CV-18-601159-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**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**

B E T W E E N:

WEST END MOTORS AND TRAILER PARK LIMITED

Applicant

-and-

189 DUNDAS STREET WEST INC.

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the "Superior Court") dated May 3, 2019, Rosen Goldberg Inc. was appointed as receiver (the "Receiver") of lands and premises registered in the name of the Respondent, 189 Dundas Street West Inc. (the "Debtor"), municipally known as 189 Dundas Street West in Mississauga, Ontario and the remaining assets and undertaking of the Debtor acquired for or used in relation thereto.

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 and 2723718 Ontario Ltd. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Property, which vesting is to be effective with respect to the Property 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 Property; (ii) that the conditions to Closing as set out in section 21 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 Property 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 _____ on _____, 2020.

**ROSEN GOLDBERG INC., in its capacity as
Court-appointed Receiver and not in its
personal or corporate capacity**

Per: _____

Name: Brahm Rosen
Title: President

Schedule "B"

Real Property

Legal Description

PIN 13150-0124 (LT)

Land Title Division for the Land Registry Office of Peel County Region

PT LT 17 CON 1 NDS (TORTWP) DES PT 1, 43R34288; MISSISSAUGA; CITY OF MISSISSAUGA

PIN 13150-0040 (LT)

Land Title Division for the Land Registry Office of Peel County Region

PT LT 17 CON 1 NDS TORONTO AS IN TT150954 (SECONDLY); MISSISSAUGA

Schedule "C1"

Claims to be deleted and expunged from PIN 13150-0040 (LT)

1. Instrument No. PR3078243 registered 2017/02/09 – Transfer to 189 Dundas Street West Inc.
2. Instrument No. PR3078250 registered 2017/02/09 – Charge in favour of West End Motors and Trailer Park Limited.
3. Instrument No. PR3078251 registered 2017/02/09 – Charge in favour of Quincy Investments Limited, 969592 Ontario Limited, Sasso Auto Consulting Inc., Fort 1 Inc., David Mark Doublet, Angelo Grossi, and Gus Stamatou.
4. Instrument No. PR3425631 registered 2018/12/20 – Transfer of Charge in favour of Quincy Investments Limited, 969593 Ontario Limited and 969592 Ontario Limited.
5. Instrument No. PR3476120 registered 2019/05/06 – Ontario Superior Court of Justice Order appointing receiver of 189 Dundas Street West.

Schedule "C2"

Claims to be deleted and expunged from PIN 13150-0124 (LT)

1. Instrument No. PR3078243 registered 2017/02/09 – Transfer in favour of 189 Dundas Street West Inc.
2. Instrument No. PR3078250 registered 2017/02/09 – Charge in favour of West End Motors and Trailer Park Limited.
3. Instrument No. PR3078251 registered 2017/02/09 – Charge in favour of Quincy Investments Limited, 969592 Ontario Limited, 969593 Ontario Auto Consulting Inc., Fort 1 Inc., David Mark Doublet, Angelo Grossi, and Gus Stamatou.
4. Instrument No. PR3425631 registered 2018/12/20 – Transfer of Charge in favour of Quincy Investments Limited, 969592 Ontario Limited, and 969593 Ontario Limited.
5. Instrument No. PR3476120 registered 2019/05/06 - Ontario Superior Court of Justice Order appointing receiver of 189 Dundas Street West.

Schedule "D"

Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property (PINS 13150-0040 (LT) and 13150-0124 (LT))

1. The reservations, limitations, provisions and conditions expressed in the original grant from the Crown and all unregistered rights, interests and privileges in favour of the Crown under or pursuant to any applicable statute or regulation.
2. Any subdivision agreement, development agreement, servicing agreement, site plan agreement or any other agreement, document, regulation, subdivision control by-law or other instrument containing provisions relating to the Lands or the use, development, installation of services and utilities or the erection of buildings or other improvements in or on the Lands.
3. All easements, licenses, rights-of-way, watercourses and rights (and all reference plans with respect thereto), whether registered or unregistered, including without limitation those for access or for the installation and maintenance of public and private utilities and other services including without limitation, telephone lines) hydro-electric lines, gas mains, water mains, sewers and drainage and other including any cost sharing agreement relating thereto, or any right of re-entry predecessor in title.
4. Any restrictive covenants and building restrictions affecting the Lands.
5. Any defects of title or encroachments by or onto the Lands, whether by gardens, revealed by any survey or reference plan of the Lands, whether now in existence or not.
6. Utility agreements, and other similar agreements with authorities or private or public utilities affecting the Lands.
7. Liens for taxes, local improvements, assessments or governmental charges or levies not at the time due or delinquent.
8. Undetermined, inchoate or statutory liens and charges (including, without limitation, the liens of public utilities, workers, suppliers of materials, contractors, subcontractors, architects and unpaid vendors of moveable property) incidental to any current operations of the Lands which have not been filed pursuant to any legal requirement or which relate to obligations not yet due or delinquent.
9. Zoning restrictions, restrictions on the use of the Lands or minor irregularities in title thereto.
10. The reservations, limitations, conditions and exceptions to title set out in the *Land Titles Act* (Ontario).

WEST END MOTORS AND TRAILER PARK LIMITED
Applicant

-and-

189 DUNDAS STREET WEST INC.
Respondent

Court File No. CV-18-601159-CL

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COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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