

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

THE HONOURABLE
JUSTICE

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MONDAY, THE 5TH DAY
OF OCTOBER, 2009

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

APPROVAL AND VESTING ORDER

(80 KING WILLIAM STREET PROPERTY)

THIS MOTION, made by Ira Smith Trustee & Receiver Inc. in its capacity as the Court-appointed interim receiver and receiver and manager (the "Receiver") of the undertaking, property and assets of 1539304 Ontario Inc. (the "Debtor") for an order, *inter alia*, approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and J. Kara Capital Corp. (the "Purchaser"), offered by the Purchaser on October 2, 2009 and accepted by the Receiver, and appended to the Second Supplementary Third Report of the Receiver dated October 2, 2009 (the "Second Supplementary Third Report"), and vesting 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 Third Report of the Receiver dated September 17, 2009, the Supplementary Third Report of the Receiver dated September 24, 2009 and the Second Supplementary Third Report and the exhibits thereto, filed, and on hearing the submissions of counsel for the Receiver, ICICI Bank Canada, the City of Hamilton, Canlight Realty Corporation, Ernie Reimer and the Purchaser and Mr. Harry Ganatra on behalf of the debtor and Mr. Marvin Caplan on his own behalf, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Robin Antonelli, sworn October 2, 2009, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtor and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and 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 Pepall dated November 12, 2008 and the amendments thereto; (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 Hamilton-Wentworth 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 settlement, fraudulent preference, assignment, fraudulent conveyance 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).

Oct 5, 2009 Peter A. Cumming J.

Schedule A – Form of Receiver’s Certificate

Court File No.: CV-08-7714-00CL

**ONTARIO
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ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Pepall of the Ontario Superior Court of Justice (the "Court") dated November 12, 2008, Ira Smith Trustee & Receiver Inc. was appointed as the interim receiver and receiver and manager (the "Receiver") of the undertaking, property and assets of 1539304 Ontario Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated September 22, 2009, the Court approved the agreement of purchase and sale (the "Sale Agreement") between the Receiver and J. Kara Capital Corp. (the "Purchaser"), offered by the Purchase on October 2, 2009 and accepted by the Receiver, and appended to the Second Supplementary Third Report of the Receiver dated October 2, 2009 (the "Report"), 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 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 _____ on _____.

**Ira Smith Trustee & Receiver Inc., in its
capacity as Receiver of the undertaking,
property and assets of 1539304 Ontario Inc.,
and not in its personal capacity**

Per: _____
Name:
Title:

Schedule "B" - Purchased Assets – Real Property

Legal Description:

LOT 21 AND PART OF LOT 22 NATHANIEL HUGHSON SURVEY (UNREGISTERED), SOUTH SIDE KING WILLIAM STREET, BETWEEN JOHN STREET AND CATHARINE STREET, BEING PART 1 ON 62R16706; HAMILTON (PIN 17167-0115 (LT))

being Municipally known as 80 King William Street, Hamilton, Ontario.

Schedule "C" – Encumbrances To Be Deleted From Real Property

1. Instrument No. WE278590 registered on December 3, 2004, being a Charge in favour of the City of Hamilton;
2. Instrument No. WE278608 registered on December 3, 2004, being an Assignment of Rents in favour of City of Hamilton;
3. Instrument No. WE278611 registered on December 3, 2004, being a Notice of Security Interest in favour of the City of Hamilton;
4. Instrument No. WE436883 registered on December 4, 2006, being a Charge in favour of ICICI Bank Canada;
5. Instrument No. WE436887 registered on December 4, 2006, being an Assignment of Rents in favour of ICICI Bank Canada;
6. Instrument No. WE438117 registered on December 11, 2006, being a Postponement of Charge from the City of Hamilton in favour of ICICI Bank Canada;
7. Instrument No. WE515627 registered on December 4, 2007, being a Notice from ICICI Bank Canada Amending Charge No. WE436883;
8. Instrument No. WE515634 registered on December 4, 2007, being a Postponement of Charge from the City of Hamilton in favour of ICICI Bank Canada;
9. Instrument No. WE541939 registered on April 23, 2008, being a Construction Lien in favour of Randy Legacy;
10. Instrument No. WE549343 registered on May 27, 2008, being a Certificate of Action in favour of Randy Legacy;
11. Instrument No. WE550186 registered on May 30, 2008, being a Construction Lien in favour of 353903 Ontario Ltd.;
12. Instrument No. WE557888 registered on July 2, 2008, being a Construction Lien in favour of Basic Drywall Inc.;
13. Instrument No. WE559961 registered on July 11, 2008, being a Construction Lien in favour of 1504593 Ontario Limited;
14. Instrument No. WE561908 registered on July 18, 2008, being a Certificate of Action in favour of 353903 Ontario Ltd.;
15. Instrument No. WE564105 registered on July 29, 2008, being a Certificate of Action in favour of Basic Drywall Inc.;
16. Instrument No. WE570744 registered on August 25, 2008, being a Certificate of Action in favour of 1504593 Ontario Limited;
17. Instrument No. WE597243 registered on December 29, 2008, being a Construction Lien in favour of 1712164 Ontario Ltd.;

18. Instrument No. WE603083 registered on February 6, 2009, being a Certificate of Action in favour of 1712164 Ontario Ltd.;
19. Instrument No. WE598810 registered on January 1, 2009, being a Court Order by ICICI Bank Canada.
20. Execution No. 08-0001178 filed with the Sheriff of the City of Hamilton names 1539304 Ontario Inc. as Defendant and Greg Ksiazek as Creditor where the sum of \$3,109.08 was awarded together with costs of \$110.00.
21. Execution No. 08-0001919 filed with the Sheriff of the City of Hamilton names 1539304 Ontario Inc., 1712164 Ontario Ltd., The City of Hamilton and ICICI Bank Canada as Defendants and Randy Legacy Carrying on Business as Cyber Services Electrical & Fire Alarm Specialists as Creditor where the sum of \$55,150.02 was awarded together with costs of \$977.06.

Schedule "D" – Permitted Encumbrances, Easements And Restrictive Covenants Related To The Real Property (unaffected by the Vesting Order)

General Permitted Encumbrances

1. Any reservations, restrictions, rights of way, easements or covenants that run with the land.
2. Any registered agreements with a governmental authority or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or telecommunication service.
3. All laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Real Property.
4. Any minor easements or servitudes for the supply of utility service to the Real Property or adjacent properties.
5. Encroachments disclosed by any errors or omissions in existing surveys of the Real Property or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-law or any applicable law, by-law or regulations which might be disclosed by a more up-to-date survey of the Real Property and survey matters generally.
6. The exceptions and qualifications set forth in the *Registry Act* (Ontario) or the *Land Titles Act* (Ontario), or amendments thereto.
7. Any reservation(s) contained in the original grant from the Crown.
8. The Lease(s) if any, and the right of any tenant, occupant, lessee or licensee to remove fixed equipment or other fixtures.
9. Subsection 44(1) of the *Land Titles Act* (Ontario) except paragraphs 11 and 14.
10. Provincial succession duties and escheats or forfeiture to the Crown.
11. The rights of any person who would, but for the *Land Titles Act* (Ontario), be entitled to the Lands or any part of through length of adverse possession, prescription, misdescription or boundaries settled by convention.
12. Any lease to which subsection 70(2) of the *Registry Act* (Ontario) applies.

Specific Permitted Encumbrances

1. Instrument No. HL16639 registered on March 29, 1957, being a Notice of Agreement between The Southam Company Limited and The Corporation of the City of Hamilton.
2. Instrument No. 62R16706 registered on February 10, 2004, being a Reference Plan.
3. Instrument No. VM259660 registered on February 10, 2004, being a Certificate of First Registration Land Titles.

4. Instrument No. WE404776 registered on July 12, 2006, being a Condominium Approval Agreement between 1539304 Ontario Inc. and the City of Hamilton.

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

THE HONOURABLE)
JUSTICE)
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MONDAY, THE 5TH DAY
OF OCTOBER, 2009

ICICI BANK CANADA

Applicant

- and -

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Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc. in its capacity as the Court-appointed interim receiver and receiver and manager (the "Receiver") of the undertaking, property and assets of 1539304 Ontario Inc. (the "Debtor") for an order, *inter alia*, approving the Third Report of the Receiver, dated September 17, 2009 (the "Third Report"), the Supplementary Third Report of the Receiver, dated September 22, 2009 (the "Supplementary Third Report") and the Second Supplementary Report of the Receiver, dated October 2, 2009 (the "Second Supplementary Third Report"), and the actions and activities of the Receiver as detailed therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report, the Supplementary Third Report and the Second Supplementary Third Report, and the exhibits thereto, filed, and on hearing the submissions of counsel for the Receiver, ICICI Bank Canada, the City of Hamilton, Canlight Realty

Corporation, Ernie Reimer and J. Kara Capital Corporation and Mr. Harry Ganatra on behalf of the debtor and Mr. Marvin Caplan on his own behalf, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Robin Antonelli, sworn October 2, 2009, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion and Receiver's Motion Record herein is abridged, that this motion is properly returnable today, the service, including the manner of service, of the Motion Record is hereby approved and that further service is dispensed with.

THIRD REPORT

2. **THIS COURT ORDERS** that the Third Report, the Supplementary Third Report and the Second Supplementary Third Report and the actions of the Receiver as reported therein be and are hereby approved.

3. **THIS COURT ORDERS** that the Receiver's fees and disbursements from June 1, 2009 to August 31, 2009, and the fees and disbursements of its legal counsel, Lang Michener LLP, from May 1, 2009 to August 31, 2009, all as detailed in the Third Report, be and are hereby approved.

4. **THIS COURT ORDERS** that the Volume 2 of the Third Report shall be treated as confidential and shall be sealed, segregated from and not form a part of the public record pending further order of this Court and shall be filed with this Court in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order request.

Upon the filing of the Receiver's Certificate that vests title, the sealing order is lifted.

Oct 5, 2009 Peter A. Cumming J.

B E T W E E N:

ICICI BANK CANADA
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- AND -

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Respondent

Court File No. CV-08-7714-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial Court)
Proceeding commenced at Toronto

ORDER

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Interim Receiver and Receiver and
Manager of 1539304 Ontario Inc.**