

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Ontario Business Corporations Act, R.S.O., Chapter B-16

THE HONOURABLE) MONDAY, THE 30TH
JUSTICE *HAINES*) DAY OF OCTOBER, 2017

BETWEEN:

ABBAS MOHAMMAD

Applicant

- and -

**STEPHEN CELESTIAL, MUSTAFA ISMAEL and
2497486 ONTARIO LTD.**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Albert Gelman Inc. in its capacity as the Court-appointed liquidator (the "Liquidator") of the undertaking, property and assets of 2497486 Ontario Ltd. (the "Company") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale, as amended, (the "Sale Agreement") between the Liquidator and Modern City Real Estate Investment Trust Company Ltd. (the "Purchaser") dated August 31, 2017 and appended to the Confidential First Report of the Liquidator dated October 18, 2017 (the "Confidential First Report"), and vesting in the Purchaser the Company'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 Notice of Motion, the First Report of the Liquidator dated October 18, 2017 (the "First Report"), the Confidential First Report, and on hearing the submissions of counsel for the Liquidator, and counsel for the Applicant and the individual Respondents, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Kelly Barrett sworn October 19, 2017, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Liquidator is hereby authorized and approved, with such minor amendments as the Liquidator may deem necessary. The Liquidator 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 Liquidator's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Liquidator's Certificate"), all of the Company'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 Conway dated June 20, 2017; (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 Toronto 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 the Liquidator is authorized and directed to pay to Equitable Bank, from the proceeds of the Transaction, amounts sufficient to obtain a discharge of Equitable Bank's Charge registered against the Real Property in the usual course, together with all usual and ordinary disbursements to third parties in order to complete the Transaction.

5. 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 Liquidator'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.

6. THIS COURT ORDERS AND DIRECTS the Liquidator to file with the Court a copy of the Liquidator's Certificate, forthwith after delivery thereof.

7. 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 Company and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Company;

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 Company and shall not be void or voidable by creditors of the Company, 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.

8. THIS COURT ORDERS AND DECLARES that the Confidential First Report, and all appendices thereto, shall be sealed and shall remain sealed until the completion of the Transaction, or further order of this Court.

9. THIS COURT ORDERS that the fees and disbursements of the Liquidator and its counsel, as set out in the Affidavit of Tom McElroy sworn on October 18, 2014 and the Affidavit of Dov Tal sworn on October 18, 2014, appearing as Appendices "F" and "G", respectively, in the First Report, be and are hereby approved.

10. THIS COURT ORDERS that the First Report and the Confidential First Report of the Liquidator, and the actions and activities of the Liquidator as described therein, be and are hereby approved.

11. THIS COURT ORDERS that the Liquidator's Interim Statement of Receipts and Disbursements as at October 17, 2017, appearing as Appendix "E" in the First Report, be and is hereby approved.

A handwritten signature in black ink, appearing to read "Harvey J.", written over a horizontal line.

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

OCT 30 2017

PER / PAR:

Handwritten initials "ml" in black ink.

Schedule A – Form of Liquidator’s Certificate

Court File No. CV-17-11740-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

Ontario Business Corporations Act, R.S.O., Chapter B-16

B E T W E E N:

ABBAS MOHAMMAD

Applicant

- and -

**STEPHEN CELESTIAL, MUSTAFA ISMAEL and
2497486 ONTARIO LTD.**

Respondents

LIQUIDATOR’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (the "Court") dated June 20, 2107, Albert Gelman Inc. was appointed as the liquidator (the "Liquidator") of the undertaking, property and assets of 2497486 Ontario Ltd. (the "Company").

B. Pursuant to an Order of the Court dated October 30, 2017, the Court approved the agreement of purchase and sale made as of August 31, 2017, as amended (the "Sale Agreement") between the Liquidator and Modern City Real Estate Investment Trust Company Ltd. (the "Purchaser") and provided for the vesting in the Purchaser of the Company’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 Liquidator 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 Liquidator and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Liquidator.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE LIQUIDATOR CERTIFIES the following:

1. The Purchaser has paid and the Liquidator 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 Liquidator and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Liquidator.
4. This Certificate was delivered by the Liquidator at _____ [TIME] on _____ [DATE].

**Albert Gelman Inc., in its capacity as
Liquidator of the undertaking, property and
assets of 2497486 Ontario Ltd., and not in its
personal capacity**

Per: _____
Name:
Title:

Schedule B – Purchased Assets

The real property described as:

PIN: 21292 - 0416 LT
Description: PT LT 5-6 BLK F PL 622 NORTH WEST ANNEX AS IN WD85145;
CITY OF TORONTO
Address: 1028 BLOOR STREET WEST, TORONTO

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

1. Charge registered against title to the Real Property in favour of Equitable Bank on December 30, 2015 in the amount of \$900,000 as Instrument No. AT4107054
2. Notice of Assignment of Rents – General registered against title to the Real Property in favour of Equitable Bank on December 30, 2015 as Instrument No. AT4107055
3. Appointment Order registered against title to the Real Property on July 17, 2017 as Instrument No. AT4628906

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property (unaffected by the Vesting Order)**

NONE

ABBAS MOHAMMAD

Applicant

-and-

**STEPHEN CELESTIAL, MUSTAFA ISMAEL AND 2497486
ONTARIO LTD.**
Respondents

Court File No. CV-17-11740-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

APPROVAL AND VESTING ORDER

**KRONIS, ROTSZTAIN,
MARGLES, CAPPEL LLP**
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Lawyers for Albert Gelman Inc., in its
capacity as Court-appointed Liquidator of
2497486 Ontario Ltd.