

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE)
)
CHARLES T. HACKLAND) WEDNESDAY THE 1ST DAY
) OF JUNE, 2016

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

DRYTECH INTERNATIONAL INC. and 6892639 CANADA INC.

Respondents

ORDER

THIS MOTION, made by Deloitte Restructuring Inc. (the “**Receiver**”) in its capacity as the receiver of all of the assets, undertakings and properties of Drytech International Inc. (“**Drytech**”) and 6892639 Canada Inc. (collectively the “**Debtors**”), for:

- (a) if necessary, an Order abridging the time for, and validating the method of, service of the Notice of Motion and directing that any further service of the Notice of Motion be dispensed with such that this motion is properly returnable on May 31, 2016;
- (b) an Order accepting and approving the First Report of the Receiver to the Court dated May 20, 2016 (the “**First Report**”) and approving the activities of the Receiver described therein;
- (c) an Order authorizing and directing the Receiver to enter into and carry out the terms of the asset purchase and sale agreement dated May 20, 2016 between the

Receiver as vendor and a purchaser (the “**Purchaser**”) (the “**Sale Agreement**”), together with any further amendments thereto deemed necessary by the Receiver in its sole opinion (the “**Transaction**”), and vesting in the Purchaser title to the assets located at or relating to the Certified Restoration Drycleaning Network LLC franchised restoration drycleaning operation (the “**Purchased Assets**”) being operated by Drytech as more particularly set out in the Sale Agreement, or as it may further direct in writing, upon closing of the Sale Agreement.

- (d) an Order approving the Receiver’s Statement of Receipts and Disbursements for the period from April 12, 2016 to May 20, 2016;
- (e) an Order approving professional fees and disbursements of the Receiver and its independent legal counsel set out herein and authorizing the Receiver to pay all such fees and disbursements from available funds; and
- (f) an Order amending sub-paragraph 3(k) of the Order dated April 11, 2016 appointing Deloitte Restructuring Inc. as Receiver to allow it to list the real property owned by the Debtors with one or more real estate agents and to solicit offers to purchase the real property from interested purchasers,

was heard this day at the Court House, 161 Elgin Street, Ottawa, Ontario.

ON READING the Notice of Motion, the First Report, the Supplemental Report to the First Report and on hearing the submissions of the lawyers for the Receiver and the lawyers for such other parties as present,

1. **THIS COURT ORDERS AND DECLARES** that the time for and method of service of the Notice of Motion and the Receiver’s First 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 First Report is hereby accepted and approved and the Receiver’s activities as set out in the First Report be and are hereby approved.

Approval and Vesting Order

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 Debtors' 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 Hackland dated April 11, 2016; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**") 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, provided that the following Encumbrances, and related Claims relating to the period from and after the closing of the Transaction, shall not be expunged and discharged against the corresponding Purchased Assets, and shall continue to exist as against such

Purchased Assets from and after and notwithstanding the closing of the Transaction (the "**Continuing Encumbrances and Claims**"):

- (a) Equipment Lease dated July 30, 2014 between Donnelly Ford Lincoln Ltd. and Drytech in respect of a 2013 Mercedes Sprinter (VIN# WD3BF4CCXD5809707) as registered pursuant to the PPSA as file # 698616504;
 - (b) Equipment Lease dated June 15, 2015 (Lease Contract # 351177-289202) between RCAP Leasing Inc. and Drytech in respect of certain cleaning equipment as registered pursuant to the PPSA as file # 707144409; and
 - (c) Equipment Lease dated October 28, 2013 between Enterprise Fleet Management and Drytech in respect of a 2014 Mercedes Sprinter 2500 (VIN# WD3BE8CC8E5833404) as registered pursuant to the PPSA as file # 692134416, if and solely to the extent that such security interest in favour of Enterprise Fleet Management is determined to rank senior in priority to the security interests granted by Drytech to both The Toronto-Dominion Bank and Business Development Bank of Canada.
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 Receiver's Certificate all Claims and Encumbrances (other than the Continuing Encumbrances and Claims) 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 Receiver to file with the Court a copy of the Receiver'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 Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

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 Debtors and shall not be void or voidable by creditors of the Debtors, 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 Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

Amendment to the Appointment Order

9. **THIS COURT ORDERS THAT** sub-paragraph 3 (k) the Order of this Court in this Application dated April 11, 2016, appointing the Receiver is removed and replaced with the following text:

- (k) to sell, including, without limiting the foregoing, by means of listing the real property whose ownership is registered in the name of one or both of the Debtors with one or more real estate agents acceptable to the Receiver, to convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

1) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$750,000; and

2) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

Enterprise Fleet Management Canada

10. **THIS COURT ORDERS AND DECLARES** that the Receiver shall not distribute the proceeds of sale of a vehicle, leased from Enterprise Fleet Management Canada ("Enterprise") and identified by VIN WD3BE8CC8E5833404, without the consent of Enterprise or, in the alternative, without further order of the court made with notice to Enterprise.

11. **THIS COURT ORDERS AND DECLARES** that the Receiver shall not offer for sale the vehicles, leased from Enterprise and identified by VIN 1FTSE3EL7DDA09534, 1HTJSSKK4EH760694, 1HTJSSKK6EH760695, 1FTSE3EL8DDA37391, 1HTJSSKKXE760697, 1HTJSSKK8EH760696, without the consent of Enterprise or, in the alternative, without further order of the court made with notice to Enterprise.

Business Development Bank of Canada

12. **THIS COURT FURTHER ORDERS** that the relief set out herein shall be without prejudice to the right of Business Development Bank of Canada ("BDC") to avail itself of its power of sale remedy provided for in its mortgage registered as Instrument Number OC1475689 with Land Registry Office Number 4 (the

"Mortgage"), which encumbers title to the property municipally known as 1045 Dairy Drive, in the City of Ottawa, Province of Ontario and which is legally described as Part of Lot 29, Concession 1 OS, Cumberland, Parts 1 and 2 Plan 4R23578; City of Ottawa (PINs 14530-0413 and 14530-0414 (LT)) (the "Property"). The exercise by BDC of its power of sale rights under the Mortgage shall be subject to the following conditions:

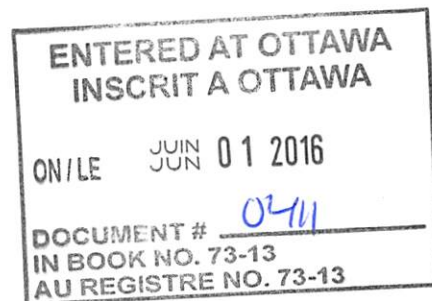
- (a) BDC shall advise the Receiver of its desire to sell the Property under the Mortgage by no later than June 15, 2016;**
- (b) The Receiver shall have received an opinion from its counsel as to the validity, enforceability and priority of the Mortgage, confirming BDC's contention that the Mortgage is a first-ranking mortgage, and the Receiver shall be satisfied as to the amounts owed by the mortgagor to BDC that are secured by the Mortgage;**
- (c) BDC shall reimburse the Receiver for the reasonable costs incurred by the Receiver in connection with the Property, which costs shall be subject to Court approval;**
- (d) BDC shall provide the Receiver with a full accounting subsequent to the sale of the Property;**
- (e) In the event there are any surplus funds, such funds shall be released by BDC to the Receiver;**
- (f) The Receiver shall be kept informed of BDC's efforts to market and sell the Property, and BDC shall sell the Property in a commercially reasonable manner. In this regard, BDC shall retain a commercial realtor to sell the Property and BDC shall instruct its realtor to keep the Receiver apprised of the sales process on a confidential basis; and**

- (g) BDC shall share with the Receiver copies of the appraisals of the value of the Property upon receipt of same by BDC and the Receiver shall keep such appraisals confidential, unless otherwise agreed by the Receiver and BDC in writing, or as may otherwise be ordered by the Court.

Aid and Recognition

13. **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.

Haellod J.



**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

and

DRYTECH INTERNATIONAL INC. AND 6892639 CANADA INC.

Respondents

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hackland of the Ontario Superior Court of Justice (the "**Court**") dated April 11, 2016, Deloitte Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the assets, undertakings and properties of Drytech International Inc. and 6892639 Canada Inc. (the "**Debtors**").

B. Pursuant to an Order of the Court dated [date], 2016, the Court approved the asset purchase and sale agreement dated [date], 2016 (the "**Sale Agreement**") between the Receiver, and [Purchaser] (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the assets described in the Sale Agreement (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;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [time] on [date] 2016.

DELOITTE RESTRUCTURING INC., in its capacity as Receiver of the assets, undertakings and properties of Drytech International Inc. and 6892639 Canada Inc., and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – Purchased Assets

1. Accounts Receivables
2. Customer List
3. Intangibles
4. Contracts
5. Fixed Assets and Equipment as contained in the Inventory prepared by Services FL save and except the assets listed below and shall include all storage containers located at the rear of the premises located at 2616 Sheffield Road, Ottawa, ON
6. Inventories
7. Real Property Lease
8. All on site containers at the date of execution of this Agreement.

EXCLUDED ASSETS

1. BIOSWEEP Restoration Contents Processor, Model 1400
2. CAN-FAN fan/filters, Model Max-Fan, E1010E202, Serial No. 140121-B00056-040
3. 2015 Dodge Grand Caravan – VIN 2C4RDGBG2FR640496
4. 2013 Ford Cargo E350 Van - VIN 1FTSE3EL8DDA37391
5. 2013 Ford Escape SE – VIN 1FMCU9G94DUD27313

THE TORONTO-DOMINION BANK

Applicant

and

DRYTECH INTERNATIONAL INC. et al.

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
OTTAWA**

ORDER

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Drytech International Inc. and 6892639 Canada Inc.

THE TORONTO-DOMINION BANK

Applicant

and

Court File No. 16-68152

DRYTECH INTERNATIONAL INC. et al.

Respondent

June 1 2016.
Order to issue as signed
Blackwell J
with dates Monday 31st.
P. Thompson for Kevin Dooly
Audie Duncan BPEC
Kieran Pinn TP Bank
Gordon Douglas for Deloitte
John O'Toole for City
Carman Barr. Eugene Faust M.A.

ONTARIO
 SUPERIOR COURT OF JUSTICE
 PROCEEDING COMMENCED AT
 OTTAWA

MOTION RECORD
 (FIRST REPORT TO THE COURT)

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FILED SUPERIOR COURT
 OF JUSTICE AT OTTAWA

MAY 24 2016

DÉPOSÉ À LA COUR
 SUPÉRIEURE DE JUSTICE À OTTAWA

Solicitors for Deloitte Restructuring Inc., Receiver of
 Drytech International Inc. and 6892639 Canada Inc.