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File No. CI 23-01-41060

THE KING'S BENCH
Winnipeg Centre

IN THE MATTER OF:

THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 55 OF *THE KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

BANK OF MONTREAL,

Applicant,

- and -

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

CERTIFIED A TRUE COPY

SALE APPROVAL, VESTING, DISTRIBUTION AND DISCHARGE ORDER

DEPT OF JUSTICE
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WAGNER

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(File No. 25810/7)

THE KING'S BENCH
Winnipeg Centre

THE HONOURABLE) Tuesday the 3rd day of October, 2023
)
MR. JUSTICE CHARTIER)

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 55 OF THE *KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

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Respondent.

CERTIFIED A TRUE COPY
SALE APPROVAL, VESTING, DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION made by Deloitte Restructuring, Inc., in its capacity as receiver and manager (the "**Receiver**") of all the assets, undertakings and properties of 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "**Debtor**") for, *inter alia*, an Order approving the sale transaction (the "**Transaction**") contemplated by the asset purchase agreement dated September 26, 2023 (the "**Sale Agreement**") between the Receiver and Rite-Way Rentals and Radiators Ltd. (the "**Purchaser**"), as referenced in the First Report of the Receiver dated September 26, 2023 (the "**First Report**"), and vesting in the Purchaser of all the Debtor's right, title and interest to the assets described in the Sale Agreement (the "**Purchased Assets**") and other ancillary relief, was heard this day at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

ON READING the First Report, the Confidential Supplement to the First Report of the Receiver dated September 26, 2023 (the "**Confidential Supplement**"), the Affidavit of Mathan Kumar sworn May 18, 2023, and on hearing the submissions of counsel for the Receiver and the Applicant, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service of Chantale DeBlois sworn September 29, 2023;

1. THIS COURT ORDERS that time for service of the Notice of Motion and the supporting materials is hereby abridged and validated such 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 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.
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 Purchased Assets described in the Sale Agreement 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:

- a. any encumbrances or charges created by the Order of the Honourable Mr. Justice Edmond dated May 25, 2023 (the "**Receivership Order**"); and
- b. all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system; and
- c. 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 in Schedule "D" hereto (the "**Permitted 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.

4. THIS COURT ORDERS that upon registration in the Morden Land Titles Office ("**MLTO**") of a Transmission in the form prescribed by *The Real Property Act* (Manitoba) duly executed by the Purchaser, and accompanied by a certified true copy of this Order, title to the real property identified in Schedule "B" hereto (the "**Real Property**") shall vest in the Purchaser and the District Registrar is hereby directed to expunge from title all of the Encumbrances listed in Schedule "C" hereto.
5. THIS COURT ORDERS that this Order shall be accepted by the District Registrar notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period be and is hereby expressly waived.

6. THIS COURT ORDERS that, for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**") 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.
7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act of Canada* and Section 20 of the *Personal Information Protection Act of Manitoba*, the Receiver is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information maintained by the Debtor with respect to former employees of the Debtor. The Purchaser shall maintain and protect the privacy of such information and shall be entitled only to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
8. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser;
9. THIS COURT ORDERS THAT, notwithstanding:
 - a. the pendency of these proceedings; and
 - b. the 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 licensed insolvency trustee 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 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, or shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. THIS COURT ORDERS that the Confidential Supplement shall be sealed, kept confidential and shall not form part of the public record, and shall remain in a sealed envelope and/or be stored electronically with this Court on an encrypted basis, limiting access only to the Registrar of this Court and the Presiding Judge, except:
 - a. by further Order of this Court;
 - b. upon the date on which the Receiver files with the Court a written notice certifying that the Sale Agreement has closed to the satisfaction of the Receiver;

whichever shall first occur, whereupon the Confidential Supplement shall form part of the public record and shall no longer be sealed.

11. THIS COURT ORDERS that following the closing of the Transaction, subject to retention of a residual holdback on account of the estimated fees and disbursements of the Receiver and its legal counsel (the "**Receiver's Holdback**") as described in paragraph 44 of the First Report, the Receiver is hereby authorized and directed to make a distribution to creditors of the Debtor in accordance with the proposed distribution as set out in paragraph 44 of the First Report, as follows:

- a. to the City of Winkler Property Tax Claim in the amount of \$53,850.68;
 - b. to CRA Source Deduction Property Claim in the amount of \$690,494.14;
 - c. to WEPP Priority Claim in the amount of \$54,817.81; and
 - d. the balance of the Net Proceeds to BMO up to the value of the BMO indebtedness.
12. THIS COURT APPROVES the First Report, the Confidential Supplement and the activities of the Receiver and its counsel described therein, including the Receiver's Statement of Receipts and Disbursements and the accounts, fees and estimated fees and disbursements of the Receiver and its counsel as reflected in the First Report, without the necessity of a formal passing of accounts;
13. THIS COURT ORDERS that upon the Receiver filing with this Court a Discharge Certificate substantially in the form attached as Schedule "E" hereto (the "**Discharge Certificate**"), certifying that it has completed the distribution as authorized by this Court pursuant to paragraph 11 of this Order, and certifying that the Receiver has completed the administration of the receivership herein, the Receiver shall be discharged as the Receiver of the assets, undertakings and properties of the Debtor, provided, however that notwithstanding its discharge herein (a) the Receiver shall remain the Receiver for the performance of such incidental duties as may be required, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceeding in favour of the Receiver in its capacity as Receiver herein.
14. THIS COURT ORDERS AND DECLARES that upon the filing of the Discharge Certificate as referenced in paragraph 13 of this Order, the Receiver is hereby released and

discharged from any and all liability that the Receiver now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Receiver while acting in its capacity as Receiver herein, save and except from any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, the Receiver is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

15. THIS COURT ORDERS AND DECLARES that no action or proceeding shall be commenced against the Receiver, including its officers, directors, employees, solicitors and agents and assigns in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court and notice to the Receiver, and upon such terms as this Court may direct.
16. 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.
17. THIS COURT ORDERS that this Order shall be served by email to all parties on the Service List, and any other party who appeared at the hearing of this motion, and further service is hereby dispensed with.

October 4, 2023


Justice Chartier

CERTIFIED A TRUE COPY

DEPUTY REGISTRAR

SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE

THE KING'S BENCH
Winnipeg Centre

IN THE MATTER OF:

THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 55 OF THE KING'S BENCH ACT, C.C.S.M. c. C280

BETWEEN:

BANK OF MONTREAL,

Applicant,

- and -

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

RECEIVER'S CERTIFICATE

RECITALS:

- A. Pursuant to the Order of the Honourable Mr. Justice Edmond of the Manitoba Court of King's Bench (the "**Court**") dated May 25, 2023, Deloitte Restructuring, Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of 3816410 Manitoba Ltd. o/a Berg's Trailers & Prep and Paint (the "**Debtor**").
- B. Pursuant to an Order of the Court dated October 3, 2023, the Court approved the Agreement of Purchase and Sale made as of September 26, 2023 (the "**Sale Agreement**") between the Receiver and Rite-Way Rentals and Radiators Ltd. (the "**Purchaser**") as described in the First Report of the Receiver dated September 26, 2023 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 the City of Winnipeg, in Manitoba, on the ____ day of _____, 2023.

DELOITTE RESTRUCTURING, INC. in its capacity as Receiver, and not in its personal capacity

Per: _____
Brent Warga, Senior Vice-President

SCHEDULE "B"
DESCRIPTION OF REAL PROPERTY

Title No. 1872413/4

Lot 1 Block 2 Plan 37465 MLTO
In S ½ 3-3-4 WPM
Excepting - Drain Plan 40578 MLTO

Title No. 1872414/4

Lot 2 Block 2 Plan 37465 MLTO
In S ½ 3-3-4 WPM
Excepting - Drain Plan 40578 MLTO

SCHEDULE "C"
ENCUMBRANCES TO BE EXPUNGED

Mortgage No. 1249795/9 in favour of Bank of Montreal

PPSN No. 1249796/9 in favour of Bank of Montreal

Certificate of Judgment No. 1283287/4 in favour of Innovative Doors (2006) Ltd. and
Estate of John Fehr

SCHEDULE "D"
PERMITTED ENCUMBRANCES

Caveat No. 1016911/4 in favour of Town of Winkler

Caveat No. 1027254/4 in favour of Manitoba Hydro - Electric Board and MTS
Communications Inc.

SCHEDULE "E"

File No. CI 23-01-41060

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Winnipeg Centre

IN THE MATTER OF:

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BETWEEN:

BANK OF MONTREAL,

Applicant,

- and -

3816410 MANITOBA LTD. O/A BERG'S TRAILERS & PREP AND PAINT,

Respondent.

DISCHARGE CERTIFICATE

RECITALS:

A. Pursuant to an Order of the Honourable Mr. Justice Edmond of the Manitoba Court of King's Bench (the "**Court**") dated May 25, 2023, Deloitte Restructuring Inc. was appointed as the receiver (the "**Receiver**") of all of the assets, undertakings and properties of the Respondent.

B. Pursuant to an Order of the Court dated October 3, 2023 (the "**Sale Approval, Vesting, Distribution and Discharge Order**"), the Court ordered that upon the Receiver filing with this Court a certificate certifying that it has completed the distribution as authorized by the Court pursuant to the said Sale Approval, Vesting, Distribution and Discharge Order, and certifying that the Receiver has completed the administration of the receivership herein, the Receiver shall be discharged as the Receiver of the assets, undertakings and properties of the Respondent.

THE RECEIVER CERTIFIES the following:

1. The Receiver has completed the distribution as authorized by the Court pursuant to paragraph 11 of the Sale Approval, Vesting, Distribution and Discharge Order;
2. The Receiver has completed the administration of the receivership herein;
3. This Certificate was delivered by the Receiver at the City of Winnipeg, in Manitoba, on the ____ day of _____, 2023.

DELOITTE RESTRUCTURING, INC. in its
capacity as Receiver, and not in its personal
capacity

Per: _____

Brent Warga, Senior Vice-President