



COURT FILE NUMBER 1901-03824
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ROYAL BANK OF CANADA
DEFENDANTS SURFACE PRO SERVICES INC., ATKINS KUNTZ
CONSTRUCTION GROUP INC., 2049829
ALBERTA INC., DOUGLAS ATKINS, DAVID
KUNTZ and ROGER LEADER

IN THE MATTER OF THE RECEIVERSHIP OF
SURFACE PRO SERVICES INC., ATKINS KUNTZ
CONSTRUCTION GROUP INC. and 2049829
ALBERTA INC.

APPLICANT DELOITTE RESTRUCTURING INC. in its capacity
as court-appointed receiver and manager of the assets,
undertakings and properties of SURFACE PRO
SERVICES INC., ATKINS KUNTZ
CONSTRUCTION GROUP INC. and 2049829
ALBERTA INC.

DOCUMENT **APPROVAL AND VESTING ORDER**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT
Torys LLP
4600 Eighth Avenue Place East
525 - Eighth Ave SW
Calgary, AB T2P 1G1
Attention: Kyle Kashuba
Telephone: +1 403.776.3744
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Email: kkashuba@torys.com
File No. 39279-2002

DATE UPON WHICH ORDER WAS PRONOUNCED: Monday, August 26, 2019
NAME OF JUSTICE WHO MADE THIS ORDER: Mr. Justice P.R. Jeffrey
LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION by Deloitte Restructuring Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Surface Pro Services Inc., Atkins Kuntz Construction Group Inc. and 2049829 Alberta Inc. for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale dated July 9, 2019 (the “**Sale Agreement**”) between the Receiver on behalf of 2049829 Alberta Inc. (the “**Debtor**”), and Caputo Developments Ltd. (the “**Purchaser**”), which is included and described in the Receiver’s first report filed August 19, 2019 (the “**First Report**”) in respect of the real property located at 8916 44 Street SE, Calgary, Alberta (the “**Lands**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the Lands and the other assets and property described in the Sale Agreement (the “**Purchased Assets**”);

AND UPON HAVING READ the Receivership Order filed March 19, 2019, the Application and the First Report, the Confidential Appendices thereto, the Affidavit of Service to be filed, and any other material and evidence filed to date in the within proceedings; **AND UPON HEARING** the submissions of counsel for the Receiver, and from any other interested parties who may be present, with no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service; **AND UPON IT APPEARING** that all interested and affected parties have been served with notice of this Application;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this Application, and the time for service of this Application is abridged to that actually given.

APPROVAL OF PROPERTY TRANSACTION

2. The Transaction relating to the Lands, which are legally described as:

LEGAL DESCRIPTION
PLAN 1412150
BLOCK 33
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.814 HECTARES (2.01 ACRES) MORE OR LESS

is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, and is deemed to be commercially reasonable and in the best interests of the receivership estate and the stakeholders affected thereby, with such minor amendments as the Receiver may deem necessary and as may be agreed upon by the Receiver and the Purchaser. The Receiver is hereby authorized and directed, subject to the terms and conditions of this Order and the Sale Agreement, to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser.

VESTING OF PROPERTY

3. Upon the delivery by the Receiver of a Receiver's certificate to the Purchaser substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Certificate**") confirming the closing of the Transaction contemplated by the Sale Agreement, all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement attached as Confidential Appendix "3" to the First Report hereto shall vest absolutely in the name of the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, pledges, mortgages, trusts or deemed trusts, liens, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgments, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**", which term shall explicitly not include the Permitted Encumbrances (as defined below)) including, without limiting the generality of the foregoing:
- (a) any encumbrances or charges created by the Receivership Order; and
 - (b) all charges, security interests or claims evidenced by registration, filing, or publication pursuant to any or all of the following: (i) the *Personal Property Security Act* (Alberta); or (ii) any other personal property, mineral, or real property registry system (collectively, the "**Registries**"); and,

for greater certainty, this Court orders that all of the Claims, other than the permitted encumbrances described in the Sale Agreement and listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**"), affecting or relating to the Lands are hereby expunged, discharged and terminated as against the Lands.

4. Upon the delivery of the Receiver's Certificate, and upon the filing of a certified copy of this Order, together with any applicable registration fees, the Registrar under the *Land Titles Act* (Alberta), and all other applicable government ministries and authorities in Alberta, exercising jurisdiction with respect to or over the Lands (collectively, the "**Governmental Authorities**"), as applicable, are hereby authorized, requested and directed to (in each case as applicable):
- (a) enter the Purchaser as the owner, lessee, and/or licensee of the Lands;
 - (b) cancel the existing Certificates of Title to the Lands and issue new Certificates of Title for the Lands, in the name of the Purchaser;
 - (c) cancel, delete or expunge from the existing title documents concerning the Lands all applicable Claims, including all Claims and any related encumbrances other than the Permitted Encumbrances; and
 - (d) register such transfers, discharge statements, or conveyances, as may be required to convey clear title to the Lands to the Purchaser, subject only to the Permitted Encumbrances.

5. This Order shall be registered and the steps set out in paragraph 4 shall be carried out by the applicable Registrar and/or Governmental Authorities notwithstanding the requirements of section 191(1) of the *Land Titles Act* (Alberta) and notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived.

CLOSING OF THE SALE TRANSACTION

6. The closing of the Transaction shall be affected in accordance with the terms of the Sale Agreement and such amendments to the Sale Agreement as may be agreed to in writing between the Purchaser and the Receiver.
7. 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 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.
8. The Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor.
9. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such persons remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser.
10. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
11. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtor.
12. The Receiver is directed to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser.
13. 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;
 - (c) any assignment in bankruptcy made in respect of the Debtor; and
 - (d) the provisions of any federal or provincial statute,

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, 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.

14. The Receiver, the Purchaser and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

Miscellaneous Matters

15. 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 as 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.
16. This Order must be served only upon those interested parties attending or represented at the within application and service may be affected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be affected the next business day following the transmission or delivery of such documents.
17. Service of this Order on any party not attending this Application is hereby dispensed with.

"P. R. Jeffrey"

Justice of the Alberta Court of Queen's Bench

Schedule "A"

Form of Receiver's Certificate

COURT FILE NO.	1901-03824	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
PLAINTIFF	ROYAL BANK OF CANADA	
DEFENDANTS	SURFACE PRO SERVICES INC., ATKINS KUNTZ CONSTRUCTION GROUP INC., 2049829 ALBERTA INC., DOUGLAS ATKINS, DAVID KUNTZ and ROGER LEADER	
	IN THE MATTER OF THE RECEIVERSHIP OF SURFACE PRO SERVICES INC., ATKINS KUNTZ CONSTRUCTION GROUP INC. and 2049829 ALBERTA INC.	
APPLICANT	DELOITTE RESTRUCTURING INC. in its capacity as court-appointed receiver and manager of the assets, undertakings and properties of SURFACE PRO SERVICES INC., ATKINS KUNTZ CONSTRUCTION GROUP INC. and 2049829 ALBERTA INC.	
DOCUMENT	RECEIVER'S CERTIFICATE	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Torys LLP 4600 Eighth Avenue Place East 525 - Eighth Ave SW Calgary, AB T2P 1G1	
	Attention: Kyle Kashuba Telephone: +1 403.776.3744 Fax: +1 403.776.3800 Email: kkashuba@torys.com File No. 39279-2002	

RECITALS

- A. On May 19, 2019, on Application by Royal Bank of Canada, the Court of Queen's Bench of Alberta appointed Deloitte Restructuring Inc. as receiver and manager (the "**Receiver**") over the assets, undertakings and properties of Surface Pro Services Inc., Atkins Kuntz Construction Group Inc. and 2049829 Alberta Inc. (collectively, the "**Debtors**"), and the Receiver was tasked with amongst other things, identifying, securing, arranging for sale and monetizing the assets, undertakings and properties of the Debtors.

- B. Pursuant to an Order of the Court dated August 26, 2019, the Court approved the agreement of purchase and sale dated July 9, 2019 (the “**Sale Agreement**”) between the Receiver, and Caputo Developments Ltd. (“**Purchaser**”), and provided, *inter alia*, for the vesting in the Purchaser of the right, title and interest of 2049829 Alberta Ltd. (the “**Debtor**”) 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 Article 7 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable; 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 Article 7 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at [Time] on [Date].

Deloitte Restructuring Inc., in its capacity as Court-appointed Receiver and Manager of the assets, undertakings and properties of Surface Pro Services Inc., Atkins Kuntz Construction Group Inc. and 2049829 Alberta Inc., and not in its personal capacity

Per: _____
Name:
Title:

Schedule "B"

Permitted Encumbrances

<u>REGISTRATION NUMBER</u>	<u>DATE (D/M/Y)</u>	<u>PARTICULARS</u>
771 147 064	29/19/1977	Zoning Regulations Subject to Calgary International Airport Zoning Regulations
811 066 062	14/04/1981	Caveat Caveator – The City of Calgary