

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE *Mr*) TUESDAY, THE 22ND
JUSTICE *Parayeski*) DAY OF JANUARY, 2013

BETWEEN:

**ORLANDO IERACI, GIUSEPPE MELECA, FRANK TROIANO,
CONCEZIO BATTAGLINI, CARMELO COMMISSO,
FRANCESCO GAGLIANO, GIUSEPPE GAGLIANO, DAVID
MEADOWS, GIUSEPPE COMMISSO, JOHN KOLOVOS,
BORDEN KENT, GABRIEL DIVITTORIO, 747304 ONTARIO
LIMITED, RITA BENNETT, MAGGIORINO TORRESAN, MARCO
BATTAGLINI, DAVID BATTAGLINI, LEO BATTAGLINI,
VINCENZO MINNELLA, DINO MINNELLA, FERRUCCIO
AGOSTINO, TONY MINNELLA, VITO MINNELLA, ROCCO
MINNELLA, ANNA M. MINNELLA and JOHN PETROSINO**

Applicants

-and-

**VINCENZO POLSINELLI, RODOLFO GRANATA, GARA
HOLDINGS, NAJEEB WAHAB, P.O.S.E. INVESTMENTS, 910913
ONTARIO INC. and TERRY HOPKINS**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte & Touche Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of P.O.S.E. Investments, including 910912 Ontario Inc. and 910913 Ontario Inc. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and

Daniel M. Newton (the "Purchaser") dated December 21, 2012 and appended to the Report of the Receiver dated January 9, 2013 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the real property described in the Sale Agreement being Part East Part Lot 21, Concession 6 and Part Lot 22, Concession 6, (Geographic Township of Georgina) being Part 1 on Reference Plan 65R634 and Parts 1 to 4 on Reference Plan 65R895; Town of Georgina, PIN # 03538-0802(LT), previously part of PIN # 03538-0148 (LT), (the "Georgina Property"), was heard this day at 45 Main Street East, Hamilton, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for filing of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today.
2. **THIS COURT ORDERS** that the time for service of this Notice of Motion and the Motion Record herein is hereby abridged so that this motion is properly returnable today, and service upon those parties described in the Affidavit of Service(s) filed is hereby validated and further service of the Notice of Motion and Motion Record is hereby dispensed with.
3. **THIS COURT ORDERS** that the conduct of the Receiver as described in the Second Report and Supplemental Report be and is hereby ratified and approved.
4. **THIS COURT DECLARES** that the Supplemental Report to the Second Report of the Receiver and Manager, and appendices thereto, be treated as confidential,

sealed and segregated from and not form part of the public record, pending further Order of this court on notice to the Receiver.

5. **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 Georgina Property to the Purchaser.

6. **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 Georgina Property 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 Thompson dated April 2, 2012; (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 Georgina Property are hereby expunged and discharged as against the Georgina Property.

7. **THIS COURT ORDERS** that upon the registration in the Land Registry Office, Registry Division 65, County of York of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario), and/or the *Land Registration Reform Act* (Ontario), 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**").

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Real Property shall stand in the place and stead of the Real Property, 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 Real Property with the same priority as they had with respect to the Real Property immediately prior to the sale, as if the Real Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

10. **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 Real Property 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.

11. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

12. **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.



Schedule "A" – Form of Receiver's Certificate

Court File No. CV-12-36909

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ORLANDO IERACI, GIUSEPPE MELECA, FRANK TROIANO,
CONCEZIO BATTAGLINI, CARMELO COMMISSO,
FRANCESCO GAGLIANO, GIUSEPPE GAGLIANO, DAVID
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ONTARIO INC. and TERRY HOPKINS**

Respondents

RECEIVER'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Thompson of the Ontario Superior Court of Justice (the "Court") dated April 2, 2012, Deloitte & Touche Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of P.O.S.E. Investments, including 910912 Ontario Inc. and 910913 Ontario Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated January 22, 2013 (the "Approval and Vesting Order"), the Court approved the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") as between Deloitte & Touche Inc., in its capacity as the receiver and manager of the Debtors (the "Receiver"), of the first part, and Daniel M. Newton, of the second part (the "Purchaser"), dated December 21, 2012 as described in the Report of the Receiver dated January 9, 2013 (the "Report"), and vesting in the Purchaser the Debtors' right, title and interest in and to the real property described in the Sale Agreement being 30237 Highway 48, Pefferlaw, and legally described as Part East Part Lot 21, Concession 6 and Part Lot 22, Concession 6, (Geographic Township of Georgina) being Part 1 on Reference Plan 65R634 Except Part 1 65R23359 and Parts 1 to 4 on Reference Plan 65R895; Town of Georgina; PIN # 03538-0802(LT), previously part of PIN # 03538-0148 (LT) (the "Georgina Property");

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Georgina Property 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 _____.

Deloitte & Touche Inc. in its capacity as Receiver of the undertaking, property and assets of P.O.S.E. Investments, including 910912 Ontario Inc. and 910913 Ontario Inc., and not in its personal capacity

Per: _____

Name: Rob Biehler

Title:

Schedule "B" – Real Property

1. **PIN # 03538-0802(LT), previously part of PIN # 03538-0148 (LT)**

Part East Part Lot 21, Concession 6 and Part Lot 22, Concession 6, (Geographic Township of Georgina) being Part 1 on Reference Plan 65R634 and Parts 1 to 4 on Reference Plan 65R895; subject to Instruments B43965B and GE9631, Town of Georgina

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

1. Transfer registered as Instrument No. R55161 on October 31, 1990 between 721482 Ontario Limited, as transferor and 910913 Ontario Inc., as transferee
2. Notice Registered as Instrument No. YR505747 on July 22, 2004 between Leonardo Spadafora and 910913 Ontario Inc.
3. Charge/Mortgage registered as Instrument No. YR1872107 on August 17, 2012 in favour of BFT Capital Inc. in the principal amount of \$100,000.00

**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Transfer Easement registered as Instrument No. GE9631 on May 26, 1950, in favour of The Hydro-Electric Power Commission of Ontario
2. Bylaw registered as Instrument No. A18540A on May 8, 1958
3. Transfer Easement registered as Instrument No. B43965B on December 29, 1967, in favour of The Consumers' Gas Company
4. Plan Reference registered as Instrument No. 65R895
5. Order in Council registered on September 27, 2004 as Instrument No. YR539224

Orlando Ieraci et al

Applicants

- and - Polisinelli et al.

Respondents

Hamilton Court File No.

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

APPROVAL AND VESTING ORDER FORM

GOWLING LAFLEUR HENDERSON LLP
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Lawyers for Deloitte & Touche Inc. in its capacity as
Receiver and Manager for P.O.S.E. Investments