

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**THE TORONTO-DOMINION BANK**

Applicant

and

**DRYTECH INTERNATIONAL INC. and 6892639 CANADA INC.**

Respondents

**NOTICE OF MOTION  
[RECEIVER'S FIFTH REPORT TO THE COURT]**

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"), will make a motion to a Judge on Tuesday June 20, 2017 at 9:30 a.m. or as soon after that time as the motion can be heard, at the Court House, 161 Elgin Street, Ottawa, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS 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 June 20, 2017;

- (b) an Order accepting and approving the Fifth Report of the Receiver to the Court dated June 12, 2017 (the "Fifth Report") and approving the activities of the Receiver described therein;
- (c) an Order approving the methodology used by the Receiver to allocate \$38,703.28 of net proceeds realized on the disposition of six motor vehicles by Enterprise Fleet Management Canada Inc. to cover (i) the related professional fees of the Receiver and its legal counsel, and (ii) a reasonable share of other receivership costs, with the final amount allocated dependent on taxation of the Receiver's fees;
- (d) an Order declaring that Drytech is the rightful owner of equipment and other assets located in Gulfport, Mississippi (the "Gulfport Assets"), with the exception of three items described in paragraph 2 of the Order of this Court dated August 8, 2016;
- (e) an Order discharging and vacating the Certificate of Pending Litigation registered by Norton Rose Fulbright Canada LLP on title of the real property whose municipal address is 1670 Vimont Court in the City of Ottawa;
- (f) an Order, substantially in the form attached to this Notice of Motion as Schedule "A", approving the sale by the Receiver of the real property owned by 6892639 Canada Inc., whose municipal address is 1670 Vimont Court in the City of Ottawa, to Gal Real Two Holdings Ltd. for the sum of \$2,670,000.00, less adjustments on closing, and vesting in Gal Real Two Holdings Ltd. 6892639 Canada Inc.'s right, title and interest in and to the property;
- (g) an Order authorizing the Receiver to destroy all boxes of records, documents and miscellaneous items found at Drytech's premises at 1670 Vimont Court, subject to statutory obligations;
- (h) an Order approving the Receiver's Interim Statement of Receipts and Disbursements for both Drytech and 6892639 Canada Inc. for the period from April 12, 2016 to May 31, 2017, but not the Receiver's fees;

- (i) an Order approving the distribution to The Toronto-Dominion Bank (subject to any priority claims and a possible holdback for professional fees) of (i) net proceeds realized on the disposition of the real properties whose municipal addresses are 1670 Vimont Court and 1661 Vimont Court on account of The Toronto-Dominion Bank's first mortgages on the two properties, and (ii) net surplus proceeds received on the disposition of real properties registered in the name of 6892639 Canada Inc., namely 1670 Vimont Court, 1661 Vimont Court and 1045 Dairy Drive in the City of Ottawa, after payment of mortgages on those properties;
- (j) an Order approving the distribution to The Toronto-Dominion Bank, subject to a possible holdback for professional fees, of final net proceeds that are realized on the disposition of Drytech property, to the extent of The Toronto-Dominion Bank's outstanding secured indebtedness; and
- (k) such further and other relief as counsel may advise and this Honourable Court permit.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) pursuant to an Order dated as of April 11, 2016, the Receiver was appointed as receiver of all of the assets, undertakings and properties of Drytech and 6892639 Canada Inc. (the "Property") pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. C.43;
- (b) since its appointment on April 11, 2016, the Receiver has pursued its mandate to take possession of, and exercise control over, the Property and to sell, convey, transfer, lease or assign the Property;
- (c) on June 1, 2016, the Receiver submitted its first report to the Court, which report is dated May 20, 2016 (the "First Report");
- (d) on August 8, 2016, the Receiver submitted its second report to the Court which report is dated July 26, 2016 (the "Second Report");

- (e) on September 12, 2016, the Receiver submitted its third report to the Court which report is dated September 6, 2016 (the "Third Report");
- (f) on November 29, 2016, the Receiver submitted its fourth report to the Court which report is dated November 22, 2016 (the "Fourth Report");
- (g) the Receiver wishes to present the Court with its Fifth Report to the Court on the status of the receivership and its activities to date which is dated June 12, 2017;
- (h) Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, and
- (i) such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this motion:

- (a) the Receiver's Fifth Report to the Court dated June 12, 2017;
- (b) such further and other materials as counsel may advise and this Honourable Court may permit.

DATE: June 12, 2017

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

TO: <http://www.insolvencies.deloitte.ca/en-ca/drytech>

**SCHEDULE "A"**

Court File No. 16-68152

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE	)	TUESDAY THE 20 <sup>TH</sup> DAY
	)	
CHARLES T. HACKLAND	)	OF JUNE, 2017

BETWEEN:

**THE TORONTO-DOMINION BANK**

Applicant

and

**DRYTECH INTERNATIONAL INC. and 6892639 CANADA INC.**

Respondents

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Deloitte Restructuring Inc. in its capacity as the court-appointed receiver (the "Receiver") of all of the assets, undertakings and properties of Drytech International Inc. and 6892639 Canada Inc. (collectively the "Debtors") acquired for, or used in relation to the business carried on by the Debtors, including all proceeds thereof (the "Property"), for an order, *inter alia*, approving the sale transaction (the "Transaction") contemplated by an Agreement of Purchase and Sale between the Receiver and Gal Real Two Holdings Ltd. (the "Purchaser") dated as of March 27, 2017, a Schedule of Riders for Agreement of Purchase and Sale dated as of March 30, 2017, an Amendment to the Agreement of Purchase and Sale dated as of June 2, 2017 and a

Reviving and Amending to the Agreement of Purchase and Sale dated as of June 6, 2017 (collectively referred to as the "Agreement") and attached as Exhibit "K" to the Fifth Report of the Receiver dated June 12, 2017 (the "Fifth Report") and vesting in the Purchaser 6892639 Canada Inc.'s right, title and interest in and to the real property whose municipal address is 1670 Vimont Court in the City of Ottawa, and which real property is more particularly described in **Schedule "A"** attached hereto (the "1670 Vimont Court Property"), was heard this day at 161 Elgin Street, Ottawa, Ontario.

**ON READING** the Fifth Report of the Receiver, as well as the exhibits attached thereto, and on hearing the submissions of counsel for the Receiver, as well as counsel for

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Receiver's notice of motion and motion record dated June 12, 2017 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPROVAL AND VESTING**

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved. 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 1670 Vimont Court Property 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 "B"** hereto (the "Receiver's Certificate"), all of 6892639 Canada Inc.'s right, title and interest in and to the 1670 Vimont Court Property shall vest absolutely in the Purchaser, free and clear

of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, pledges, assignments, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, title retention agreement or arrangement, restrictive covenant, rights of way, easements, encroachments, reserves, leases or tenancies, or other encumbrance, claims, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, and all agreements of purchase and sale, reservation contracts and leases (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order herein of The Honourable Mr. Justice Charles T. Hackland dated April 11, 2016; (ii) all charges, security interests, agreements, leases or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Land Titles Act* (Ontario) or any other personal or real 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 assumed encumbrances listed on **Schedule "D"** hereto) and (iv) any other Claims registered or arising prior to the registration of this Order (the "Additional Encumbrances") and, for greater certainty, this Court orders that, upon the delivery of the Receiver's Certificate to the Purchaser, all of the Encumbrances and Additional Encumbrances affecting or relating to the 1670 Vimont Court Property are hereby expunged and discharged as against the 1670 Vimont Court Property.

4. **THIS COURT ORDERS** that upon the registration in the Ottawa-Carleton Land Registry Office (No. 4) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the 1670 Vimont Court Property identified in **Schedule "A"** hereto in fee simple, and is hereby directed to delete and expunge from title to the 1670 Vimont Court Property all of the Claims listed in **Schedule "C"** hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the 1670 Vimont Court Property shall stand in the place and stead of the 1670 Vimont Court 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 1670 Vimont Court Property with the same priority as they had with respect to the 1670 Vimont Court Property immediately prior to the sale, as if the 1670 Vimont Court 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.

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 application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 6892639 Canada Inc. and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made in respect of the 6892639 Canada Inc.;

the vesting of the 1670 Vimont Court Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 6892639 Canada Inc. and shall not be void or voidable by creditors of 6892639 Canada Inc., nor shall it constitute or 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.

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

**GENERAL**

9. **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.

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**Schedule "A" – Description of the 1670 Vimont Court Property**

Municipal Address: 1670 Vimont Court, Ottawa

PIN 14508-0237

Description Part of Lot 31, Concession 1, Old Survey, Cumberland, Part 14, Plan 50R6232; Ottawa

**Schedule "B" – Receiver's Certificate**

Court File No. 16-68152

**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 herein of The Honourable Mr. Justice Charles T. 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 all of the assets, undertakings and properties of Drytech International Inc. and 6892639 Canada Inc. (collectively the "Debtors") acquired for, or used in relation to the business carried on by the Debtors, including all proceeds thereof (the "Property").

B. Pursuant to an order of the Court dated June 20, 2017, the (the "Approval Order") the Court approved the Agreement of Purchase and Sale between the Receiver and Gal Real Two Holdings Ltd. (the "Purchaser") dated as of March 27, 2017, a Schedule of Riders for Agreement of Purchase and Sale dated as of March 30, 2017,

an Amendment to the Agreement of Purchase and Sale dated as of June 2, 2017 and a Reviving and Amending to the Agreement of Purchase and Sale dated as of June 6, 2017 (collectively referred to as the "Agreement") and provided for the vesting in the Purchaser of 6892639 Canada Inc.'s right, title and interest in and to the real property whose municipal address is 1670 Vimont Court in the City of Ottawa, and which real property is more particularly described in **Appendix "A"** attached hereto (the "1670 Vimont Court Property"), which vesting is to be effective with respect to the 1670 Vimont Court Property 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 1670 Vimont Court Property; (ii) that the conditions to Closing as set out in the 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 June 20, 2017 Approval Order.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the 1670 Vimont Court Property payable on the Closing Date pursuant to the Agreement;
2. The conditions to Closing as set out in the 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 \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**DELOITTE RESTRUCTURING INC., in its capacity as receiver of Drytech International Inc. and 6892639 Canada Inc., and not in its personal capacity**

**Per:** \_\_\_\_\_

**Name:**

**Title:**

**Appendix "A" – Description of the 1670 Vimont Court Property**

**Municipal Address: 1670 Vimont Court, Ottawa**

**PIN 14508-0237**

**Description Part of Lot 31, Concession 1, Old Survey, Cumberland, Part 14, Plan 50R6232; Ottawa**

**Schedule "C" – Claims**

Encumbrances to be extinguished to be listed below.

PIN No. 14508-0237

<u>Registration No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Parties From</u>	<u>Parties To</u>
OC1267805	August 9, 2011	Charge	6892639 Canada Inc.	The Toronto-Dominion Bank
OC1267809	August 9, 2011	Notice of Assignment of Rents	6892639 Canada Inc.	The Toronto-Dominion Bank
OC1761664	February 3, 2016	Certificate of Pending Litigation	Drytech International Inc., Phil Amyot, Patrick Dooley	

**PPSA Registrations**

<u>File No.</u>	<u>Registration Number</u>	<u>Secured Creditor</u>	<u>Debtor(s)</u>	<u>Collateral</u>
671995368	20110805 1633 1590 6117	The Toronto-Dominion Bank	6892639 Canada Inc. Drytech International Inc.	Inventory Equipment Assets Other
671995386	20110805 1634 1590 6118	The Toronto-Dominion Bank	6892639 Canada Inc.	Assets Other
671995395	20110805 1634 1590 6119	The Toronto-Dominion Bank	6892639 Canada Inc.	Assets Other
673293438	20110929 1132 1590 8765	The Toronto-Dominion Bank (Branch # 0533)	6892639 Canada Inc. Drytech International Inc. Philip Amyot	Assets Other
673293456	20110929 1133 1590 8766	The Toronto-Dominion Bank (Branch # 0533)	6892639 Canada Inc. Drytech International Inc. Kevin P. Dooley	Assets Other

673509051	20111007 0922 1590 9270	The Toronto- Dominion Bank	6892639 Canada Inc.	Assets Other
686689992	20130507 0859 1862 4934	Business Development Bank of Canada	6892639 Canada Inc.	Inventory Equipment Accounts Assets Other Motor Vehicle

**Schedule "D" – Assumed Encumbrances related to the Real Property  
(unaffected by the Approval & Vesting Order)**

1. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act*, R.S.O 1990, and any amendments thereto or any successor legislation;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered easements or rights of way in favour of any governmental authority or public utility;
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due;
5. All agreements and easements, registered or otherwise, for utilities and services for hydro, water, heat, power, sewer, drainage, cable and telephone serving the Property, adjacent or neighbouring properties;
6. Any encroachments, defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property;
7. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations;
8. Any subdivision agreements, site plan agreements, developments and any other agreements with the Municipality, Region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Minor title defects, if any, that do not in the aggregate materially affect the use of the Property for the purposes for which it is used on the date of acceptance of this Agreement;
10. The following instruments registered on title against the Lands:

<u>Registration No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Parties From</u>	<u>Parties To</u>
RR91617	October 17, 1984	By-law		The Corporation of the Township of Cumberland
RR93140	January 31, 1985	Plan Expropriation		The Corporation of the Township of Cumberland
RR93348	February	By-law		The Corporation

	18, 1985			of the Township of Cumberland
OC870708	July 2, 2008	Application to Annex Restrictive Covenant	6892639 Canada Inc.	City of Ottawa
OC1104841	May 7, 2010	Notice of Site Plan Agreement	6892639 Canada Inc.	City of Ottawa

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Applicant

and

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Respondents

**ONTARIO  
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PROCEEDING COMMENCED AT  
OTTAWA

**APPROVAL AND VESTING ORDER**

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**NOTICE OF MOTION**

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