

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE TORONTO-DOMINION BANK

Applicant

and

DRYTECH INTERNATIONAL INC. and 6892639 CANADA INC.

Respondents

**NOTICE OF MOTION
[RECEIVER'S FOURTH 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 November 29, 2016 at 2:30 p.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 November 29, 2016;

- (b) an Order accepting and approving the Fourth Report of the Receiver to the Court dated November 22, 2016 (the "Fourth Report") and approving the activities of the Receiver described therein;
- (c) an Order wherein the Court accepts the Supplementary Report to the Fourth Report (the "Supplemental Report") and, following the Court's review of the Supplemental Report, seals the Supplemental Report;
- (d) a Declaration that Drytech is the rightful owner of the inventory, equipment and other property listed in Schedule "A" of this Notice of Motion, which is the same list of inventory, equipment and other property attached as Schedule "C" (Disputed Assets) to the Order of this Court dated August 8, 2016;
- (e) an Order requiring Mr. Kevin Dooley to deliver to the Receiver any of the inventory, equipment and other property listed in Schedule "A" of this Notice of Motion which is in his possession, care or control;
- (f) an Order requiring Mr. Kevin Dooley to deliver to the Receiver a Vacuum Chamber (as defined in paragraph 39(b) of the Second Report), which is in his possession, care or control;
- (g) an Order requiring Mr. Kevin Dooley to pay forthwith any storage or other costs related to his possession, care or control of any of the inventory, equipment and other property listed in Schedule "A" of this Notice of Motion;
- (h) an Order amending sub-paragraph 3(k) of the Order of this Court dated April 11, 2016 to read as follows:
 - (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 \$950,000; 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.

- (i) an Order, substantially in the form attached to this Notice of Motion as Schedule "B", approving the sale by the Receiver of the real property owned by 6892639 Canada Inc., whose municipal address is 1661 Vimont Court in the City of Ottawa, to the City of Ottawa for the sum of \$74,235.00, less adjustments on closing, and vesting in the City of Ottawa 6892639 Canada Inc.'s right, title and interest in and to the property;
- (j) an Order approving the Receiver's Interim Statement of Receipts and Disbursements for the period from April 12, 2016 to November 17, 2016, but not the Receiver's fees;
- (k) an Order approving the proposed interim distribution of funds to secured creditors; and

- (l) 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 is dated September 6, 2016 (the "Third Report");
- (f) the Receiver wishes to present the Court with its Fourth Report to the Court on the status of the receivership and its activities to date which is dated November 22, 2016;
- (g) the Receiver wishes to present the Court with a Supplementary Report to the Fourth Report to the Court (the "Supplemental Report") which, following the Court's review of the Supplemental Report, the Receiver requests be sealed;

- (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 the motion:

- (a) the Receiver's Fourth Report to the Court dated November 22, 2016;
- (b) the Supplementary Report to the Fourth Report to the Court dated November 22, 2016; and
- (c) such further and other materials as counsel may advise and this Honourable Court may permit.

DATE: November 23, 2016

GOWLING WLG (CANADA) LLP
Barristers and Solicitors
160 Elgin Street
Suite 2600,
Ottawa, Ontario
K1P 1C3

Gordon Douglas (LSUC # 363590)

Telephone: (613) 786-8652
Facsimile: (613) 788-3635

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

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

SCHEDULE "A"

- Ten Vaults of Equipment, each containing 30 Air Movers and 8 Dehumidifiers (in total, 300 Air Movers and 80 Dehumidifiers)
- One 45KVA Generator
- One 70KVA Generator
- One 125 KVA Generator
- Three 2000 CFM Desiccants
- Two 6000 CFM Desiccants
- Two 25 Ton AC Units
- One 16 foot Royal Crown Trailer with 14 Dehumidifiers and 50 Air Movers
- Two 5000 CFM Desiccants
- Miscellaneous Duct and Ancillary Supplies

particularly described in **Schedule "A"** attached hereto (the "1661 Vimont Court Property"), and vesting in the Purchaser 6892639 Canada Inc.'s right, title and interest in and to the 1661 Vimont Court Property, was heard this day at 161 Elgin Street, Ottawa, Ontario.

ON READING the Fourth 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 November 22, 2016 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 1661 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 1661 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 all of the Encumbrances and Additional Encumbrances affecting or relating to the 1661 Vimont Court Property are hereby expunged and discharged as against the 1661 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 1661 Vimont Court Property identified in **Schedule "A"** hereto in fee simple, and is hereby directed to delete and expunge from title to the 1661 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 1661 Vimont Court Property shall stand in the place and stead of the 1661 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 1661 Vimont Court Property with the same priority as they

had with respect to the 1661 Vimont Court Property immediately prior to the sale, as if the 1661 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 1661 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.

Schedule "A" – Description of the 1661 Vimont Court Property

Municipal Address: 1661 Vimont Court, Ottawa

PIN 14508-0320

Description Part of Lot 31, Concession 1 (O.S.) Cumberland, Part 1 on Plan 4R-24949,
City of 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 November [X], 2016, the (the "Approval Order") the Court approved the sale transaction (the "Transaction") contemplated in the exchange of correspondence between the Receiver and the City of Ottawa (the "Purchaser") referenced in the Fourth Report of the Receiver dated November 22, 2016

(the "Fourth Report") involving the real property whose municipal address is 1661 Vimont Court in the City of Ottawa, and which property is more particularly described in **Appendix "A"** attached hereto (the "1661 Vimont Court Property"), and vesting in the Purchaser 6892639 Canada Inc.'s right, title and interest in and to the 1661 Vimont Court Property, which vesting is to be effective with respect to the 1661 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 1661 Vimont Court Property; and (ii) 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 November [X], 2016 Approval Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the 1661 Vimont Court Property payable on the Closing Date pursuant to the exchange of correspondence between the Receiver and the Purchaser; and
2. The Transaction has been completed to the satisfaction of the Receiver.
3. 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 1661 Vimont Court Property

Municipal Address: 1661 Vimont Court, Ottawa

PIN 14508-0320

Description Part of Lot 31, Concession 1 (O.S.) Cumberland, Part 1 on Plan 4R-24949,
City of Ottawa

Schedule "C" – Claims

Encumbrances to be extinguished to be listed below.

<u>Registration No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Parties From</u>	<u>Parties To</u>
OC1348509	April 3, 2012	Charge/Mortgage	6892639 Canada Inc.	The Toronto-Dominion Bank

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 authorizing the acquisition of lands for municipal purposes		
N659029Z	May 14, 1993	Restrictive Covenants	Enrique Roman-Blacio In Trust	The Corporation of the Township of Cumberland

OC1348508	April 3, 2012	Restrictive Covenants	6892639 Canada Inc.	City of Ottawa
-----------	------------------	-----------------------	------------------------	----------------

THE TORONTO-DOMINION BANK

Applicant

and

DRYTECH INTERNATIONAL INC. et al.

Respondents

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

NOTICE OF MOTION

GOWLING WLG (CANADA) LLP
Barristers and Solicitors
160 Elgin Street
Suite 2600,
Ottawa, Ontario
K1P 1C3

Gordon Douglas LSUC#: 363590

E-mail: gordon.douglas@gowlingwlg.com

Telephone: 613-233-1781

Facsimile: 613-788-3635

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