

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. / MDM.) THURSDAY, THE 3RD
JUSTICE *Whitten*) DAY OF JULY, 2014

B E T W E E N:

**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 Restructuring Inc. (formerly 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 dated April 17, 2014 (the "Sale Agreement") between the Receiver and Rick Pereira and Nancy Pereira

and by requisition letter dated June 20, 2014 redirecting title to 2124985 Ontario Inc. (the "Purchaser") and appended to the Supplemental Report to the Fifth Report of the Receiver dated June 19, 2014 (the "Report"), and vesting in the Purchasers the Debtor's right, title and interest in and to the real property described in the Sale Agreement being 370504 B Concession, Pt. Lt. 5 Con. Broken Front Concession, Formerly Twsp of Sydenham as in Instrument No. R267818 S/T Instrument R267818, Municipality of Meaford PIN #37098-0128 and Lt. 6 Con. Broken Front Concession, Formerly Township of Sydenham, Municipality of Meaford, PIN #37098-0125 and Lot 6 Con. A., Formerly Twsp of Sydenham Except Lands Described as SY538, Municipality of Meaford PIN #37098-0150 (LT) and all parcels being irregularly shaped, (the "Meaford 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 Fifth Report and Supplemental Report be and is hereby ratified and approved.

4. **THIS COURT DECLARES** that the Supplemental Report to the Fifth 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 Meaford 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 Meaford 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 Meaford Property are hereby expunged and discharged as against the Meaford Property.

7. **THIS COURT ORDERS** that upon the registration in the Land Registry Office, Registry Division 16, County of Grey 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 Purchasers 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 Purchasers 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.



| | |
|---------------------|-------------|
| ENTERED AT HAMILTON | |
| IN Book No. | 319 |
| as Document No. | 371 |
| on: | JUL 04 2011 |
| by: | DM |

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
MEADOWS, GIUSEPPE COMMISSO, JOHN KOLOVOS,
BORDEN KENT, GABRIEL DIVITTORIO, 747304 ONTARIO
LIMITED, RITA BENNETT, MAGGIORINO TORRESAN, MARCO
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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

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 Restructuring Inc. (formerly 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 dated April 17, 2014 (the "Sale Agreement") as between Deloitte & Touche Restructuring Inc., in its capacity as the receiver and manager of the Debtors (the "Receiver"), of the first part, and Rick Pereira and Nancy Pereira, of the second part and by requisition letter dated June 20, 2014 redirecting title to 2124985 Ontario Inc. (the "Purchaser"), as described in the Report of the Receiver dated June 18, 2014 (the "Report"), and vesting in the Purchasers the Debtors' right, title and interest in and to the real property described in the Sale Agreement 370504 B Concession, Pt. Lt. 5 Con. Broken Front Concession, Formerly Twsp of Sydenham as in Instrument No. R267818 S/T Instrument R267818, Municipality of Meaford PIN #37098-0128 and Lt. 6 Con. Broken Front Concession, Formerly Township of Sydenham, Municipality of Meaford, PIN #37098-0125 and Lot 6 Con. A., Formerly Twsp of Sydenham Except Lands Described as SY538, Municipality of Meaford PIN #37098-0150 (LT) and all parcels being irregularly shaped, (the "Meaford Property");

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid and the Receiver has received the Purchase Price for the Meaford 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 Purchasers; 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 Restructuring Inc. (formerly 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

FIRSTLY: PIN # 37098-0150 (LT)

Lot 6, Concession A, formerly Township of Sydenham, except lands described as SY538, Municipality of Meaford

SECONDLY: PIN # 37098-0125 (LT)

Lot 6, Broken Front Concession, formerly Township of Sydenham, Municipality of Meaford

THIRDLY: PIN # 37098-0128 (LT)

Part Lot 5, Broken Front Concession, formerly Township of Sydenham, as in Instrument No. R267818, subject to Instrument R267818, Municipality of Meaford

SCHEDULE "C"

Claims/Encumbrances to be Deleted

| PIN | OWNER/MUNICIPAL ADDRESS | ENCUMBRANCE | INSTRUMENT# |
|----------------|---|---------------------------|-------------|
| 37098-0150(LT) | 910912 Ontario Inc. not assigned | Application (Court Order) | GY62181 |
| 37098-0125(LT) | 910912 Ontario Inc. 370504 Concession B | Application(Court Order) | GY62181 |
| 37098-0128(LT) | 910912 Ontario Inc. 423020 Harbour Drive | Application (Court Order) | GY62181 |

SCHEDULE "D"

Permitted Encumbrances, Easements and Restrictive Covenants
(unaffected by the Vesting Order)

| PIN | OWNER/MUNICIPAL ADDRESS | ENCUMBRANCE | INSTRUMENT# |
|----------------|---|--------------------------|-------------|
| 37098-0150(LT) | 910912 Ontario Inc. not assigned | None registered on title | |
| 37098-0125(LT) | 910912 Ontario Inc. 370504 Concession B | None registered on title | |
| 37098-0128(LT) | 910912 Ontario Inc. 423020 Harbour Drive | Assignment of Lease | R122223 |
| | | Assignment of Lease | R146766 |
| | | Plan Reference | 16R467 |
| | | Notice of Lease | R167562 |
| | | Notice of Lease | R167989 |
| | | Notice of Lease | R167990 |
| | | Notice of Lease | R168018 |
| | | Notice of Lease | R168410 |
| | | Notice of Lease | R168478 |
| | | Assignment of Lease | R169147 |
| | | Assignment of Lease | R182592 |
| | | Assignment of Lease | R211353 |
| | | Assignment of Lease | R211354 |
| | | Assignment of Lease | R211426 |
| | | Assignment of Lease | R212516 |
| | | Notice of Lease | R220680 |
| | | Assignment of Lease | R220945 |
| | | Notice of Lease | R228550 |
| | | Assignment of Lease | R228553 |
| | | Assignment of Lease | R230307 |
| | | Assignment of Lease | R234197 |

SCHEDULE "D"

Permitted Encumbrances, Easements and Restrictive Covenants
(unaffected by the Vesting Order)

| PIN | OWNER/MUNICIPAL ADDRESS | ENCUMBRANCE | INSTRUMENT# |
|-----|-------------------------|---------------------|--|
| | | Lease | R236331 |
| | | Notice of Lease | R242307 |
| | | Assignment of Lease | R257415 |
| | | Assignment of Lease | R263825 |
| | | NOTICE | R279945 Multi |
| | | Assignment General | R282254 (relates to Inst. No. R228551, R228553, R257415) |
| | | Lease | R300241 |
| | | Assignment of Lease | R307831 (relates to Inst. No. R212516) |
| | | Assignment General | R359973 (relates to R212516 R307831) |
| | | NOTICE | R388584 Multi |
| | | Assignment of Lease | R392260 (relates to Inst. No. R168018) |
| | | NOTICE | R401694 (relates to Inst. No. R167990, R169147, R211426) |
| | | Assignment General | R414193 |
| | | CHARGE | R414194 |
| | | Assignment of Lease | R507793 (relates to R148340) |
| | | Deposit | R544987 |
| | | Assignment of Lease | R556542 Multi |

Orlando Ieraci et al

- and - Polsinelli et al.

Applicants

Respondents

Hamilton Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
ORANGEVILLE

APPROVAL AND VESTING ORDER FORM

GOWLING LAFLEUR HENDERSON LLP
Barristers & Solicitors
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Hamilton, ON L8P 4Z5

Robert C. Dunford (#54819D)

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Fax: 905-523-2948

Lawyers for Deloitte Restructuring Inc. (formerly
Deloitte & Touche Inc.) in its capacity as Receiver and
Manager for P.O.S.E. Investments