

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
)
JUSTICE KOEHNEN) TUESDAY, THE 20TH
) DAY OF APRIL, 2021

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

TOOLPLAS SYSTEMS INC. AND TOOL PROCESSING SOLUTIONS INC.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the undertaking, property and assets of Toolplas Systems Inc. and Tool Processing Solutions Inc. (together, the "**Debtors**") for an order (i) approving the sale transaction (the "**Transaction**") contemplated by the auction services agreement (the "**Auction Agreement**") between the Receiver and Corporate Assets Inc. (the "**Purchaser**") dated March 25, 2021 and appended to the First Report of the Receiver dated April 13, 2021 (the "**First Report**"), and vesting in the Purchaser the Debtors' right, title and interest in

and to the assets listed in Schedule "A" attached to the Auction Agreement, as such list of assets may be amended by further order of the Court (collectively with any other assets of the Debtors that are included in Schedule "A" to the Auction Agreement as agreed between the Receiver and the Purchaser pursuant to the terms of the Auction Agreement, the "**Purchased Assets**"), (ii) sealing from the public record the confidential appendices attached to the First Report, and (iii) approving the activities of the Receiver and fees of the Receiver and its counsel, was heard this day via judicial video conference due to the COVID-19 pandemic.

ON READING the Report, the Fee Affidavit of Paul Casey sworn April 12, 2021 (the "**Casey Affidavit**"), and the Fee Affidavit of Grant Moffat sworn April 13, 2021 (the "**Moffat Affidavit**"), and on hearing submissions from counsel to the Receiver, and counsel to those parties listed on the counsel list for today's hearing, and no one else appearing for any other interested person, although duly served as evidenced by the Affidavit of Service of Rachel Bengino sworn April 13, 2021, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby validated so that this Motion was properly returnable on April 20, 2021, and hereby dispenses with further service thereof.

APPROVAL OF TRANSACTION

2. **THIS COURT ORDERS AND DECLARES** that the each of the Auction Agreement and the Transaction is hereby approved, and the execution of the Auction 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 perform its obligations under the Auction Agreement and 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 Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS** that the Receiver is authorized and directed to grant the Purchaser access to and use of the premises located at 1905 Blackacre Drive, Oldcastle, ON N0R 1L0 and 3920 North Talbot Road, Oldcastle, ON N0R 1L0 (together, the "**Premises**") for the

purpose of conducting and completing the Sale (as defined in the Auction Agreement) for the period ending August 25, 2021 and the Purchaser shall be entitled to conduct the Sale from the Premises during such period in accordance with the Auction Agreement.

4. **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 Debtors' right, title and interest in and to the Purchased Assets 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 Koehnen dated March 3, 2021; and (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 (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that 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 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 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.

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 either of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of either of the Debtors;

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 either of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a 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** that if the Auction Agreement is terminated in accordance with its terms, the Receiver is hereby authorized and directed to enter into negotiations to sell the Purchased Assets to any other party identified by the Receiver through the Sale Process (as defined in the First Report) or otherwise.

SEALING

9. **THIS COURT ORDERS** that Confidential Appendices “1”, “2”, and “3” to the First Report, being respectively (i) a summary of the offers received in the Sale Process; (ii) the summary of auction proposals received by the Receiver; and (iii) an unredacted copy of the Auction Agreement, are hereby sealed pending further order of the Court, and shall not form part of the public record, provided that the Receiver may, in its discretion, disclose the commercial terms of the Auction Agreement to a lessor of any of the Leased Assets (as defined in the First Report) in order to negotiate the inclusion of such Leased Assets as Purchased Assets under the Auction Agreement.

APPROVAL OF ACTIVITIES OF THE RECEIVER

10. **THIS COURT ORDERS** that the First Report and the activities, decisions and conduct of the Receiver as set out in the First Report are hereby authorized and approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

11. **THIS COURT ORDERS** that the Receiver's statement of interim receipts and disbursements for the period March 3, 2021 to April 9, 2021, as set out in the First Report and attached as Appendix "D" to the First Report, is hereby approved.

APPROVAL OF FEES OF THE RECEIVER AND ITS COUNSEL

12. **THIS COURT ORDERS** that the professional fees and disbursements of the Receiver for the period between March 3, 2021 to March 28, 2021, in the amount of \$451,145.78, plus Harmonized Sales Tax ("**HST**") of \$58,648.95, for a total of \$509,794.73s, as further set out in the First Report and the Casey Affidavit attached as Appendix "E" to the First Report, are hereby approved.

13. **THIS COURT ORDERS** that the professional fees and disbursements of Thornton Grout Finnigan LLP, counsel to the Receiver, for the period between March 2, 2021 to March 31, 2021, in the amount of \$152,256.34, plus HST of \$19,792.28, for a total of \$172,048.62, as further set out in the First Report and the Moffat Affidavit attached as Appendix "F" to the First Report, are hereby approved.

GENERAL

14. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

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 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.

RAJ

Schedule A – Form of Receiver’s Certificate

Court File No. CV-21-00658065-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

TOOLPLAS SYSTEMS INC. AND TOOL PROCESSING SOLUTIONS INC.

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Koehnen of the Ontario Superior Court of Justice (the "**Court**") dated March 3, 2021, Deloitte Restructuring Inc. was appointed as the receiver and manager (the "**Receiver**") of the undertaking, property and assets of Toolplas Systems Inc. and Tool Processing Solutions Inc. (together, the "**Debtors**").

B. Pursuant to an Order of the Court dated April 20, 2021, the Court approved the auction services agreement dated March 25, 2021 (the "**Auction Agreement**") between the Receiver and Corporate Assets Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors’ right, title and interest 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 Net Guaranteed Amount (as defined

in the Auction Agreement) for the Purchased Assets; (ii) that the conditions to Closing as set out in page 5 of the Auction 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 Auction Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Net Guaranteed Amount for the Purchased Assets payable on the Closing Date pursuant to the Auction Agreement;
2. The conditions to Closing as set out in the Auction 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., solely in its capacity as Receiver of the undertaking, property and assets of Toolplas Systems Inc. and Tool Processing Solutions Inc., and not in its personal capacity

Per: _____

Name:

Title:

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3 AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C-43, AS AMENDED

THE TORONTO-DOMINION BANK

-and-

TOOLPLAS SYSTEMS INC. AND TOOL PROCESSING SOLUTIONS INC.

Applicant

Respondents

Court File No. CV-21-00658065-00CL

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Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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