

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) THURSDAY, THE
) 26TH DAY
JUSTICE KEDERMAN) OF MARCH, 2009



IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

BANK OF AMERICA, N.A.

Applicant

and

ROYAL DOULTON CANADA LIMITED and
WATERFORD WEDGWOOD CANADA INC.

Respondents

ORDER

THIS MOTION, made by the Applicant for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "CJA") appointing Deloitte & Touche Inc. ("Deloitte") as interim receiver and receiver, without security, of all of the assets, undertakings and properties of each of Royal Doulton Canada Limited and Waterford Wedgwood Canada Inc. (collectively, the "Debtors") for the principal purpose of effecting a sale (the "Transaction") of the Debtors' right, title and interest in their businesses and assets to

WWRD Canada, Inc. (the "Purchaser") pursuant to an agreement of purchase and sale made as of March 1, 2009 to be entered into between the Receiver and the Purchaser (the "Agreement"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert M. Scalzitti sworn March 25, 2009 and the exhibits thereto and the Report of Deloitte as proposed Receiver, and on hearing the submissions of counsel for Bank of America, N.A., and counsel for the Purchaser, and on reading the consent of Deloitte to act as the Receiver.

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today.

1.A THIS COURT FURTHER ORDERS that service of these materials may be effected on the Service List in accordance with paragraph 23 hereof.

APPOINTMENT

2. THIS COURT ORDERS that, pursuant to section 47(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed interim receiver and receiver (in such capacities, the "Receiver"), without security, of all of the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is not appointed as manager of the Debtors and shall not take possession of the Property or operate the businesses of the Debtors except as set out herein or upon further Order of this Court, but the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to apply for any orders necessary to approve the Transaction and the Agreement and to give effect to the Transaction and convey the Purchased

Assets, as defined in the Agreement, free and clear of any liens or encumbrances affecting such Purchased Assets;

- (b) to the extent that the Transaction is approved by this Honourable Court pursuant to an approval and vesting order related to the Transaction (i) to enter into the Agreement and to execute all ancillary documents and agreements as may be necessary or desirable in connection with the Transaction, (ii) to complete the Transaction between the Receiver and the Purchaser as contemplated by the Agreement, and (iii) to receive and hold the proceeds of the Transaction pending further order of this Court (except as specifically provided herein);
- (c) take possession and control of the Excluded Assets, as defined in the Agreement, subject to the terms of the Agreement;
- (d) to enter into the interim transition agreement contemplated by the Agreement (the "Interim Transition Agreement"), and to perform the Receiver's obligations thereunder;
- (e) subject to the terms of the Agreement and the Interim Transition Agreement, to repudiate or terminate any contracts of the Debtors, or either of them, including real property leases;
- (f) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of the Transaction or any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, or either of them, for any purpose pursuant to this Order;

- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, or either of them, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (i) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (j) to fund the bankrupt estate(s) of the Debtors from the proceeds of the Transaction, provided that such funding shall not exceed \$35,000 unless permitted by further order of this Court;
- (k) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, or either of them, including, without limiting the generality of the foregoing, such agreements as may be necessary or desirable pursuant to the Interim Transition Agreement, including occupation agreements for any property leased by the Debtors, or either of them;
- (l) to exercise any shareholder, partnership, joint venture or other rights which the Debtors, or either of them, may have, to the extent not contrary to or otherwise inconsistent with the Transaction;
- (m) to take any steps reasonably incidental to the exercise of these powers; and
- (n) to receive from the Purchaser and hold in escrow, in an interest bearing account, all prepaid occupation costs in respect of leased real property in accordance with the Interim Transition Agreement referred to in the Agreement and to fund from such escrow funds the trustee in bankruptcy

of the estates of the Debtors from time to time to pay such occupation costs to the landlords of such leased real property with any surplus funds (including accrued interest) to be returned to the Purchaser,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver or the Purchaser upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, or either of them, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service

provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors, or either of them, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors, or either of them, the Property or the Transaction are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business that the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any

registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, or either of them, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors, or either of them, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors, or either of them, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the applicable Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for

herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the applicable Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction. The Debtors are hereby authorized but not obligated to terminate the employment of their respective employees that are not offered employment by the Purchaser pursuant to the terms of the Agreement.

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to the Purchaser and its advisors in connection with the Transaction, but only to the extent desirable or required to negotiate and attempt to complete the Transaction. The Purchaser shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of and preparation for the Transaction, and if it does not complete the Transaction, shall return all such information to the Receiver, or in the alternative destroy all such information. The Purchaser shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

18. THIS COURT ORDERS the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

GENERAL

20. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

21. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors, or either of them.

22. 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 and the United Kingdom or elsewhere 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.

23. THIS COURT ORDERS that the Applicant, the Receiver, or any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-Filing protocol of the Commercial List to the extent practical, and the Receiver may post a copy of any or all such materials on its website at www.deloitte.com/ca/waterfordwedgwood; provided that for the purposes of the hearing of the relief pursuant to the Applicant's Notice of Motion returnable March 27, 2009 seeking, among other things, the approval of the Transaction, the Applicant's service of its materials by e-mailing such materials to the e-mail address available to it on the Service List, is effective for these purposes.

24. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

25. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

26. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

27. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Saving Time on the date of this Order.

A handwritten signature in black ink, appearing to be "Justice G.", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 27 2009

PER / PAR: 

BANK OF AMERICA, N.A.
Applicant

ROYAL DOULTON CANADA LIMITED
and WATERFORD WEDGWOOD
CANADA INC.
Respondent

Court File No: CV-09-_____

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at «place»

ORDER

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