

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 10TH
JUSTICE McEWEN) DAY OF MARCH, 2020

BETWEEN:



NATIONAL BANK OF CANADA

Applicant

- and -

EVERGREEN CONSUMER BRANDS INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Evergreen Consumer Brands Inc. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and LEC Custom Products, Inc. (the "**Purchaser**") dated as of the 2nd day of March, 2020 and appended to the Report of the Receiver dated March 3, 2020 (the "**Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

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JM and supplemental report filed and served on
March 9, 2020 JM

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Purchaser and the Debtor, as well as such other counsel as may be indicated on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Katie Parent sworn March 3, 2020 filed:

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.
2. **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 Purchased Assets to the Purchaser.
3. **THIS COURT ORDERS** that, notwithstanding the provisions of Section 171(3) of the *Business Corporations Act* (Ontario) (the “**OBCA**”), the Receiver be and is hereby authorized and directed to complete, execute and file articles of amendment for and on behalf of the Debtor and any officer and director of the Debtor (such articles of amendment to be deemed to have been signed by a director or an officer of the Debtor and executed in accordance with the OBCA when so signed by the Receiver as directed by this Court) for the sole purpose of changing the corporate name of the Debtor to a corporate name that does not include the word “Evergreen” or “Evergreen Consumer Brands” (and such amendment shall be deemed to have been duly authorized by Section 168 and 170 of the OBCA (as applicable) without shareholder or director resolution approving such amendment being required) and this Court hereby directs the Director (as defined in the OBCA) to endorse thereon a certificate of amendment upon being in receipt from the Receiver of two duplicate originals of such articles of amendment together with the prescribed fees and any other required documents under the OBCA (which the Receiver be and is hereby also authorized and directed to complete, execute and file for and on behalf of the Debtor and any officer and director of the Debtor if and as required) except for any such documents as have been dispensed or otherwise dealt with pursuant to the deeming provisions contained herein.

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 Debtor's 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 (statutory or otherwise), easements, rights of first refusal or first offer, title retention agreements or arrangements, conditional sales, restrictive covenants, 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 Gilmore dated February 13, 2020; 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 COURTS ORDERS AND DIRECTS** that any person with an Encumbrance that is registered against the Purchased Assets comprising Intellectual Property (as defined in the Sale Agreement) shall take such steps and execute such documents as may be reasonably requested by the Receiver or the Purchaser to discharge the registration of such Encumbrance against such Purchased Assets.

6. **THIS COURT ORDERS** that (i) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (ii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (each of the foregoing being a "**Person**") shall forthwith advise the Receiver of the existence of any asset, undertaking and/or property of the Debtor acquired for, or used in relation to a business carried on by the Debtor ("**Property**"), that is or remains in such Person's possession or control, and shall deliver all such Property, to the extent that it constitutes Purchased Assets, to the Purchaser forthwith upon the Receiver's request.

7. **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.

8. **THIS COURT ORDERS** that, until the filing of the Receiver's Certificate with the Court or further order of the Court, whichever occurs first, the unredacted version of the Report and the Report's Appendices "B" (Confidential Information Memorandum dated December 2019), "C" (comparison of offers), and "D" (unredacted version of the Sale Agreement) shall be sealed and kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court File, in a sealed envelope on which is affixed a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

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, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of the Transferred Employees (as defined in the Sale Agreement). The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

11. **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 Purchased Assets in the Purchaser 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 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.

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 / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 10 2020

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-20-00636080-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BETWEEN:

NATIONAL BANK OF CANADA

Applicant

- and -

EVERGREEN CONSUMER BRANDS INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Gilmore of the Ontario Superior Court of Justice (the "**Court**") dated February 13, 2020, Deloitte Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Evergreen Consumer Brands Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated March 10, 2020 (the "**Order**"), the Court approved the agreement of purchase and sale made as of March 2, 2020 (the "**Sale Agreement**") between the Receiver and LEC Custom Products, Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor’s 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 Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in article 8

of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable; and (iii) the Transaction (as defined in the Order) 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 Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in article 8 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

Deloitte Restructuring Inc., in its capacity as court-appointed receiver and manager of the undertaking, property and assets of Evergreen Consumer Brands Inc., and not in its personal capacity

Per: _____
Name:
Title:

IN THE MATTER OF SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY
ACT AND SECTION 101 OF THE COURTS OF JUSTICE ACT BETWEEN
NATIONAL BANK OF CANADA, APPLICANT, AND EVERGREEN CONSUMER
BRANDS INC., RESPONDENT

Court File No. CV-20-00636080-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced in TORONTO

Approval and
Vesting Order.

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

Mario Forte (LSUC #27293F)
Tel: 416-597-6477
Email: forte@gsnh.com

Joël Turgeon (Student-at-Law)

Lawyers for Deloitte Restructuring Inc. in its
capacity as receiver and manager of the assets,
undertakings and properties of Evergreen Consumer
Brands Inc.