

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.)
JUSTICE THOMAS)
TUESDAY, THE 3RD DAY
OF MARCH, 2015

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE and ROYAL TIMBERS INC.

Respondents

APPLICATION UNDER SECTION 107 OF THE BUSINESS CORPORATIONS
ACT, R.S.O. 1990, C. B. 16, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of the assets, undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. ("**Royal Timbers**") pursuant to the Order of The Honourable Mr. Justice Thomas dated June 5, 2013 (the "**Receiver**"), for, *inter alia*, an order approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale dated effective January 21, 2015 (the "**APS**"), between the Receiver, as vendor, and, 838605 Ontario Limited, as purchaser (the "**Purchaser**"), in respect of the real property described on **Schedule "A"** (the "**Lands**") and appended as Appendix "G" to the Confidential Supplement to the Sixth Report of the Receiver dated February 20, 2015 (the "**Sixth Report**"), and vesting in the

Purchaser all of Royal Timber's right, title and interest in and to the Lands, was heard this day at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

ON READING the Sixth Report and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Julie Los sworn February 20, 2015, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the APS 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 Lands to the Purchaser.
2. 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 Royal Timber's right, title and interest in and to the Lands 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 Mr. Justice Thomas dated June 5, 2013; (ii) 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"** (the "**Permitted Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Lands are hereby expunged and discharged as against the Lands.
3. THIS COURT ORDERS that upon registration in the Land Registry Office for the Land Titles Division of Essex (No. 12) 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 Lands described in Schedule "A" hereto in

fee simple, and is hereby directed to delete and expunge from title to the Lands described in Schedule "A" hereto all of the Claims listed in **Schedule "C"** hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Lands shall stand in the place and stead of the Lands, 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 Lands with the same priority as they had with respect to the Lands immediately prior to the sale, as if the Lands had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

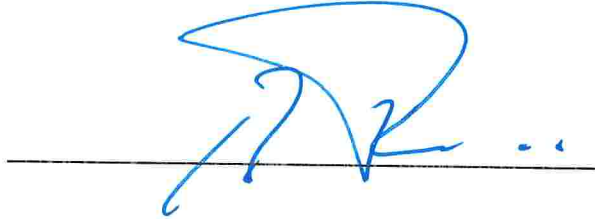
6. THIS COURT ORDERS that, notwithstanding:

- (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 Royal Timbers and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Royal Timbers;

the vesting of the Lands in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Royal Timbers and shall not be void or voidable by creditors of Royal Timbers, 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.

7. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

8. 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 WINDSOR	
In Book No.	<u>26</u>
re Document No.	<u>265</u>
on	<u>Mar 3 2015</u>
by	<u>CL</u>

Schedule A – Lands

The lands and premises legally described as:

Part Lot 143, Concession 1, designated as Parts 2, 25, 47 and 59, Plan 12R22842; Windsor; S/T & T/W an easement as in CE267537 (PIN 01566-0893).

Schedule B

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
SCOTT D'AMORE and ROYAL TIMBERS INC.

Respondents

APPLICATION UNDER SECTION 207 OF THE *BUSINESS CORPORATIONS*
ACT, R.S.O. 1990, C. B. 16, AS AMENDED

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Thomas of the Ontario Superior Court of Justice (the "**Court**") dated June 5, 2013, BDO Canada Limited ("**BDO**") was appointed as the receiver (the "**Receiver**") of the assets, undertakings and properties of Banwell Development Corporation and Royal Timbers Inc. ("**Royal Timbers**").

B. Pursuant to an Order of the Court dated March 3, 2015, the Court approved an Agreement of Purchase and Sale dated effective January 21, 2015 (the "**APS**") between the Receiver, as vendor, and 838605 Ontario Limited (the "**Purchaser**") in respect of the real property legally described as Part lot 143, Concession 1, designated as Parts 2, 25, 47 and 59, Plan 12R22842; Windsor; S/T & TW an easement as in CE267537 (PIN 01566-0893) (the "**Lands**") and appended as Appendix "G" to the Confidential Supplement of the Receiver dated February 20, 2015, and vesting in the Purchaser all of Royal Timber's right, title and interest in and to the Lands, which vesting is to be effective with respect to the Lands 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 Lands; (ii) that the conditions to closing as set out in the APS 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 APS.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Lands payable on closing pursuant to the APS;
2. The conditions to closing as set out in the APS 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].

BDO CANADA LIMITED solely in its capacity
as Court-appointed receiver of Banwell
Development Corporation and Royal Timbers
Inc. and not in its personal capacity

Per: _____

Name:

Title:

KEVIN D'AMORE

Applicant

and

BANWELL DEVELOPMENT CORPORATION,
928579 ONTARIO LIMITED, SCOTT D'AMORE
and ROYAL TIMBERS INC.

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

MILLER THOMSON LLP

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Tony Van Klink LSUC#: 29008M
Tel: 519.931.3509
Fax: 519.858.8511

Lawyers for BDO Canada Limited,
Receiver of Banwell Development
Corporation and Royal Timbers Inc.

Schedule C – Claims to be deleted and expunged from title to the Lands

1. Instrument No. CE163177 – Charge in the principal amount of \$8,000,000 given by Banwell Development Corporation to Bank of Montreal registered on August 10, 2005.
2. Instrument No. CE171659 – Postponement given by Simba Group Developments Limited and Patrick D'Amore to Bank of Montreal registered on September 20, 2005.
3. Instrument No. CE269241 – Charge in the principal amount of \$102,246 given by Royal Timbers Inc. to Simba Group Developments Limited and Patrick D'Amore registered on April 24, 2007.
4. Instrument No. CE569187 - Notice of Court Order registered on June 18, 2013.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Lands**

(unaffected by the Vesting Order)

- a) The reservations, limitations, provisions and conditions expressed in the original Agreement from the Crown and all statutory exceptions to title;
- b) Any registered restrictions or covenants that run with the Lands provided the same have been complied with in all material respects;
- c) Any easements, rights of way, or right of re-entry in favour of a developer, not materially or adversely impairing the present use of the Lands;
- d) Any agreements with municipal, utilities or public authorities provided the same have been complied with in all material respects;
- e) Any minor encroachments which might be revealed by an up to date survey of the Lands;
- f) Instrument No. D37712178 – Application for First Registration;
- g) Instrument No. LT336126 – Bylaw;
- h) Instrument No. CE185377 – Application for Absolute Title;
- i) Instrument No. CE191966 – Notice – Subdivision Agreement;
- j) Instrument No. CE247184 – Notice – Site Plan Agreement;
- k) Instrument No. 12R22842 – Plan Reference;
- l) Instrument No. CE267537 – Transfer Easement;
- m) Instrument No. CE361644 - Notice – Site Plan Agreement;
- n) Instrument No. CE447653 – Notice – Shared Parking Agreement;
- o) Instrument No. CE447656 – Notice – Mutual Services Agreement;
- p) Instrument No. CE449307 – LR's Order; and
- q) Instrument No. CE467451 – Notice – Site Plan Amendment Agreement.

KEVIN D'AMORE

Applicant

and

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ONTARIO LIMITED, SCOTT D'AMORE and ROYAL
TIMBERS INC.

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**ONTARIO
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Proceeding commenced at Windsor

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London, ON Canada N6A 5R8

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