



Court File No.: CV-23-00011162-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

FRIDAY, THE 28th

)

JUSTICE CORNELL

)

DAY OF JULY, 2023

BETWEEN:

**ELLIOT LAKE AND NORTH SHORE CORPORATION FOR BUSINESS
DEVELOPMENT and EAST ALGOMA COMMUNITY FUTURES
DEVELOPMENT CORPORATION/ALGOMA EST SOCIETE D'AIDE AU
DEVELOPPEMENT DES COLLECTIVITES**

Applicants

and

ALMENARA EN EL RIO INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION made by BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of Almenara En El Rio Inc. ("**Almenara**") for the relief set out in the Notice of Motion dated July 24, 2023, including the approval of the sale transaction (the "**Transaction**") contemplated by a Sale Agreement between the Receiver in its capacity as Receiver of Almenara and Renee Dubois (the "**Purchaser**") made as of June 16, 2023 (the "**Sale Agreement**"), vesting in the Purchaser Almenara's (the "**Debtor**") right, title, benefit and interest in the assets described in the Sale Agreement (the "**Purchased Assets**") was heard this day by videoconference.

ON READING the Motion Record of the Receiver and the First Report of the Receiver dated July 24, 2023 (the "**Receiver's Report**"), the Confidential Supplement to the Receiver's Report dated July 24, 2023, the Affidavit of Dominique Michaud sworn July 24, 2023 (the "**Robins Fee Affidavit**"), the Affidavit of Ian Klaiman sworn July 20, 2023 (the "**LZW Fee Affidavit**") and the Affidavit of Gary Cerrato sworn July 20, 2023 (the "**BDO Fee Affidavit**"), and the Supplementary Motion Record dated July 27, 2023 ("**Supplementary Record**"), and on hearing the submissions of counsel for the Receiver and any such other counsel or individual as were present, no one appearing for any other person on the service list, although properly served as evidenced by the Affidavit of Rachel Cheung sworn July 27, 2023, filed.

1. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Sale Agreement.
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 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 Almenara's right, title, benefit and interest in and to the Purchased Assets described in the Sale Agreement 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, and all purchase and sale agreements entered into by Almenara (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order dated April 28, 2023; (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 B** 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 C**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby terminated, expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the applicable land registry office or land titles office of a Transfer/Deed of Land or equivalent document, or of an application for registration of this Order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Purchaser as the owner of the subject real property in fee simple, and is hereby directed to delete and expunge from title to the real property all of the Claims listed in **Schedule B** hereto.

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 applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 102co and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 102co;

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 Almenara and shall not be void or voidable by creditors of Almenara, 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 AND DECLARES** that the Transaction is exempt from Section 6(3) of the *Retail Sales Act* (Ontario).

9. **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 SUDBURY

This 28 day

Of July 20 23

Court No: 7712

BY:



Schedule A- Form of Receiver's Certificate

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ELLIOT LAKE AND NORTH SHORE CORPORATION FOR BUSINESS
DEVELOPMENT and EAST ALGOMA COMMUNITY FUTURES
DEVELOPMENT CORPORATION/ALGOMA EST SOCIETE D'AIDE AU
DEVELOPPEMENT DES COLLECTIVITES**

Applicants

and

ALMENARA EN EL RIO INC.

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable R.D. Gordon of the Ontario Superior Court of Justice (the "**Court**") dated April 28, 2023, BDO Canada Limited was appointed as receiver and manager (the "**Receiver**") of the assets, undertakings and properties of Almenara En El Rio Inc. ("**Almenara**").

B. Pursuant to an Order of the Court dated July 28, 2023, the Court approved the agreement of purchase and sale made as of June 16, 2023 (the "**Sale Agreement**") between the Receiver and Renee Dubois (the "**Purchaser**") and provided for the vesting in the Purchaser of Almenara'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 the Asset Purchase 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 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 the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, respectively; 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, in its capacity as Receiver, and not in its personal capacity

Per: _____
Name:
Title:

Schedule B

A. Claims to be Deleted and Expunged from Title to Real Property

1. Instrument No. AL85550 being a Transfer.
2. Instrument No. AL85551 being a Charge in favour of Elliot Lake and North Shore Corporation for Business Development.
3. Instrument No. AL85552 being a Charge in favour of East Algoma Community Futures Development Corporation.
4. Instrument No. AL86739 being a Notice of Pari Passu Agreement registered by Elliot Lake and North Shore Corporation for Business Development and East Algoma Community Futures Development Corporation.
5. Instrument No. AL209889 being a Certificate of Tax Arrears registered by the Corporation of the Town of Spanish.
6. Instrument No. AL264114 being a Court Order.

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants
Related to the Real Property**

(Unaffected by the Vesting Order)

1. Instrument No. LT47276 being an Order regarding subdivision control.
2. Instrument No. 1R4013 being a Plan Reference.
3. Instrument No. 1R4319 being a Plan Reference.
4. Instrument No.LT166906 being a Notice registered by The Corporation of the Township of Shedden.
5. Instrument No. 1R8873 being a Plan Reference.

**ELLIOT LAKE AND NORTH - and-
SHORE CORPORATION
FOR BUSINESS
DEVELOPMENT et al.**

ALMENARA EN EL RIO INC.

Applicants

Respondent

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ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT SUDBURY

APPROVAL AND VESTING ORDER

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