

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
MADAME JUSTICE HELEN) THURSDAY, THE 3RD DAY OF
MACLEOD-BELIVEAU) MARCH, 2016

BETWEEN:

PETER VOGELZANG

Applicant

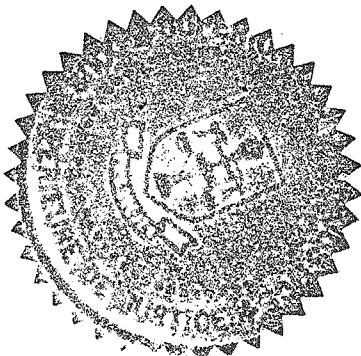
and

JAMES BARNETT

and

2139911 ONTARIO LIMITED

Respondents



JUDGMENT

THIS APPLICATION was heard on this day without a jury at Kingston, in the presence of the counsel for the Applicant, no one appearing for the Respondents, James Barnett and 2139911 Ontario Limited, although properly served as appears from the Affidavit of Terry MacNeil sworn on August 27, 2015.

ON READING THE NOTICE OF APPLICATION AND THE EVIDENCE FILED BY THE PARTIES, and on hearing the submissions of the counsel for the Applicant,

1. THIS COURT ORDERS that, pursuant to Section 207 of the Ontario Business Corporations Act, 2139911 Ontario Limited be wound up.

2. THIS COURT FURTHER ORDERS that, the Respondents, 2139911 Ontario Limited and James Barnett, are restrained from entering into any contracts with respect to any new projects, hiring employees or consultants, or making any commitments or expenditures on behalf of 2139911 Ontario Limited without the Applicant's express written consent and further restrained from accepting any new liability without the Applicant's express written consent.

3. THIS COURT FURTHER ORDERS that, the Respondents, 2139911 Ontario Limited and James Barnett, disclose to the Applicant the status of all projects to which 2139911 Ontario Limited is currently involved and the status of all negotiations in which it is involved regarding potential projects, investors and buyers of some or all of the assets of 2139911 Ontario Limited.

4. THIS COURT FURTHER ORDERS that, the Respondents, 2139911 Ontario Limited and James Barnett, provide to the Applicant full and complete disclosure and access to the financial books and records of 2139911 Ontario Limited.

5. THIS COURT FURTHER ORDERS that an accounting of the Shareholders' accounts be made.

6. THIS COURT FURTHER ORDERS that, BDO CANADA LIMITED be appointed as Liquidator, without security, of the estate and effects of 2139911 Ontario Limited for the purpose winding up its affairs and distributing its Property.

7. THIS COURT FURTHER ORDERS that, BDO CANADA LIMITED be appointed as Receiver, without security, to manage the affairs of 2139911 Ontario Limited pending its liquidation.

8. THIS COURT FURTHER ORDERS that the Liquidator/Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Liquidator/Receiver is hereby expressly empowered and authorized to do any of the following where the Liquidator/Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the 2139911 Ontario Limited, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the 2139911 Ontario Limited;
- (d) 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 Liquidator/Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the 2139911 Ontario Limited or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the 2139911 Ontario Limited and to exercise all remedies of the 2139911

Ontario Limited in collecting such monies, including, without limitation, to enforce any security held by the 2139911 Ontario Limited;

- (g) to settle, extend or compromise any indebtedness owing to the 2139911 Ontario Limited;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Liquidator/Receiver's name or in the name and on behalf of the 2139911 Ontario Limited, for any purpose pursuant to this Order;
- (i) 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 2139911 Ontario Limited, the Property or the Liquidator/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;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator/Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$25,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00 and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Liquidator/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 Liquidator/Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Liquidator/Receiver, in the name of the 2139911 Ontario Limited;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the 2139911 Ontario Limited, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the 2139911 Ontario Limited;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the 2139911 Ontario Limited may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Liquidator/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 2139911 Ontario Limited, and without interference from any other Person.

9. THIS COURT FURTHER ORDERS that (i) 2139911 Ontario Limited, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its 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 Liquidator/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 Liquidator/Receiver, and shall deliver all such Property to the Liquidator/Receiver upon the Liquidator/Receiver's request.

10. THIS COURT FURTHER ORDERS that all Persons shall forthwith advise the Liquidator/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 2139911 Ontario Limited, 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 Liquidator/Receiver or permit the Liquidator/Receiver to make, retain and take away copies thereof and grant to the Liquidator/Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 10 or in paragraph 11 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 Liquidator/Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

11. THIS COURT FURTHER 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 Liquidator/Receiver for the purpose of allowing the Liquidator/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 Liquidator/Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidator/Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Liquidator/Receiver with all such assistance in gaining immediate access to the information in the Records as the Liquidator/Receiver may in its discretion require including providing the Liquidator/Receiver with instructions on the use of any computer or other system and providing the Liquidator/Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

12. THIS COURT FURTHER ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or

continued against the Liquidator/Receiver except with the written consent of the Receiver or with leave of this Court.

13. THIS COURT FURTHER ORDERS that no Proceeding against or in respect of 2139911 Ontario Limited or the Property shall be commenced or continued except with the written consent of the Liquidator/Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of 2139911 Ontario Limited or the Property are hereby stayed and suspended pending further Order of this Court.

14. THIS COURT FURTHER ORDERS that the Liquidator/Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save or except for any gross negligence or wilful misconduct on its part as so found by a court of competent jurisdiction.

15. THIS COURT FURTHER ORDERS that nothing herein contained shall require the Liquidator/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 hereunder (the "Environmental Legislation"), provided however

that nothing herein shall exempt the Liquidator/Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Liquidator/Receiver shall not, as a result of this Order or anything done in pursuance of the Liquidator's/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.

16. THIS COURT FURTHER ORDERS that the Liquidator/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, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *Bankruptcy and Insolvency Act* or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Liquidator/Receiver by section 14.06 of *Bankruptcy and Insolvency Act* or by any other applicable legislation.

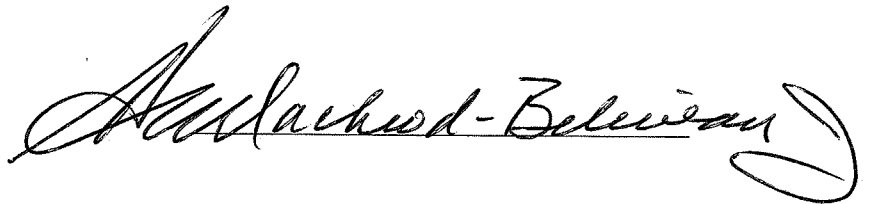
17. THIS COURT FURTHER ORDERS that the Liquidator/Receiver and counsel to the Liquidator/Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Liquidator/Receiver and counsel to the Liquidator/Receiver shall be entitled to and are hereby granted a charge (the "Liquidator/Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Liquidator/Receiver's Charge 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.

18. THIS COURT FURTHER ORDERS that the Liquidator/Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Liquidator/Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice.
19. THIS COURT FURTHER ORDERS that prior to the passing of its accounts, the Liquidator/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 standard rates and charges of the Liquidator/Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.
20. THIS COURT FURTHER ORDERS that the Liquidator/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 FURTHER ORDERS that nothing in this Order shall prevent the Liquidator/Receiver from acting as a trustee in bankruptcy of 2139911 Ontario Limited.
22. THIS COURT FURTHER ORDERS that nothing in this Order derogates from any rights that the Liquidator/Receiver may have pursuant to the applicable provisions of the Ontario Business Corporations Act.
23. THIS COURT FURTHER ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Liquidator/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 Liquidator/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 Liquidator/Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

24. THIS COURT FURTHER 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 Liquidator/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.

25. THIS COURT FURTHER ORDERS that the fixed costs of the Application be paid by the Respondent, James Barnett, to the Applicant in the amount of \$4,862.70.

A handwritten signature in cursive script, appearing to read "Anshud-Belevan", written in black ink. The signature is fluid and somewhat stylized, with a large loop at the end.

ENTERED AT KINGSTON
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JUN 09 2016

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PETER VOGELZANG
Applicant

v.

JAMES BARNETT AND 2139911 ONTARIO LIMITED
Respondents

Court File No. CV-15-355

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Kingston

JUDGMENT

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