

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM) FRIDAY, THE 12TH
)
JUSTICE BARBARA A. CONWAY) DAY OF NOVEMBER, 2021

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

B E T W E E N:

NATIONAL BANK OF CANADA

Applicant

- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC.,
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited (“**BDO**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of each of Nimbus Environmental Solutions Inc., Oakdale Enterprises Inc., Nimbus Water Systems Inc., 365 Pro Installations Inc., 2242462 Ontario Limited, and Water Filter Cart Inc. (collectively, the “**Debtor**”) for an order, among other things, vesting in In-Store Water Purification Inc. (“**In-Store**”) and 1000014274 Ontario Inc. (“**100 Ontario**”) all of the Debtor’s right, title and interest in and to the assets (the “**Purchased Assets**”) described in the agreement of purchase and sale (the “**Sale**

Agreement") between the Receiver and 2752837 Ontario Inc. (the "**Purchaser**") dated September 6, 2021 and appended to the First Report of the Receiver dated September 8 (the "**First Report**") and the Second Report of the Receiver dated November 1, 2021 (the "**Second Report**"), was heard this day by way of judicial videoconference in light of the COVID-19 pandemic.

ON READING the First Report, the Second Report, the Supplement to the Second Report of the Receiver dated November 11, 2021, the Affidavit of Peter Bozzo sworn November 9, 2021, the Affidavit of Antonio Mainieri sworn November 9, 2021, the Affidavit of Colin James sworn November 10, 2021, and the Affidavit of Stefan Caserta sworn November 10, 2021, and on hearing the submissions of counsel for the Receiver and those other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Adam Driedger sworn November 3, 2021 filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the motion record of the Receiver is hereby validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

VESTING OF PURCHASED ASSETS

2. **THIS COURT ORDERS AND DECLARES** that the sale and vesting of the Purchased Assets in and to In-Store and 100 Ontario pursuant to the Sale Agreement is hereby authorized and approved. 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 contemplated by the Sale Agreement (the "**Transaction**") and for the conveyance of the Purchased Assets to In-Store and 100 Ontario. For clarity, subject to and in accordance with the provisions

hereof and the Sale Agreement, the Real Property (as defined below) shall vest in and to 100 Ontario and all of the Purchased Assets that are not the Real Property (collectively, the “**Business Assets**”) shall vest in and to In-Store.

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**”): (i) all of the Debtor’s right, title and interest in and to the Business Assets shall vest absolutely in In-Store; and (ii) all of the Debtor’s right, title and interest in and to the real property described at Schedule “B” hereto (the “**Real Property**”), shall vest absolutely in 100 Ontario, in each case, 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 Justice Hainey dated August 23, 2021; (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 “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”) 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.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Metro Toronto (LRO #80) of an Application for Vesting Order in the form

prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter 100 Ontario as the owner of the 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 “C” 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, 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 In-Store all human resources and payroll information in the Company’s records pertaining to the Debtor’s past and current employees, including personal information of the Transferred Employees (as defined in the Sale Agreement). In-Store 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.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

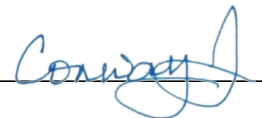
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in In-Store and 100 Ontario 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.

GENERAL

9. **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.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada 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.



Schedule A – Form of Receiver’s Certificate

Court File No. CV-21-00667395-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
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B E T W E E N:

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- and -

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATIONS INC.,
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Haaney of the Ontario Superior Court of Justice (the “**Court**”) dated August 23, 2021, BDO Canada Limited (“**BDO**”) was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of each of Nimbus Environmental Solutions Inc., Oakdale Enterprises Inc., Nimbus Water Systems Inc., 365 Pro Installations Inc., 2242462 Ontario Limited, and Water Filter Cart Inc. (collectively, the “**Debtor**”).

B. Pursuant to an Order of the Court dated November 9, 2021, the Court approved the vesting in In-Store Water Purification Inc. (“**In-Store**”) and 1000014274 Ontario Inc. (“**100 Ontario**”) of the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement) pursuant to the agreement of purchase and sale made as of September 6, 2021 (the “**Sale Agreement**”) between the Receiver and 2752837 Ontario Inc. (the “**Purchaser**”), 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 5 of the Sale 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 Article 5 of the Sale Agreement 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, in its capacity as Receiver of the undertaking, property and assets of the Debtor, and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – Real Property

Real Property

PIN10293-0072(LT): PCLS 123-1 & 124-1 SECT. M770 LOTS 123 & 124 PL 66M770 TWP OF YORK/NORTH YORK, CITY OF TORONTO,

and municipally known as 112 Oakdale Road, Toronto, Ontario.

Schedule C – Claims to be deleted and expunged from title to Real Property

PIN10293-0072 (LT)

Instrument No.	Date	Instrument Type	Parties From	Parties To
AT3758190	2014/12/04	Transfer	112 Oakdale Road Limited	2422343 Ontario Limited
AT3832266	2015/03/13	Application to Change Name-Owner	2422343 Ontario Limited	2422343 Ontario Inc.
AT5209558	2019/08/13	Application to Change Name-Owner	2422343 Ontario Inc.	Oakdale Enterprises Inc.
AT5237573	2019/09/16	Charge	Oakdale Enterprises Inc.	National Bank of Canada
AT5237574	2019/09/16	Notice Of Assignment Of Rents-General	Oakdale Enterprises Inc.	National Bank of Canada
AT5840692	2021/08/25	Application To Register Court Order	Ontario Superior Court of Justice	National Bank of Canada

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property
(unaffected by the Vesting Order)**

General:

- (a) any registered reservations, restrictions, rights of way, easements or covenants that run with the Buildings and Lands;
- (b) any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
- (c) all laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Buildings and Lands;
- (d) any minor easements for the supply of utility service to the Buildings and Lands or adjacent properties;
- (e) encroachments disclosed by any errors or omissions in existing surveys of the Buildings and Lands or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the land and survey matters generally;
- (f) the exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
- (g) the reservations contained in the original grant from the Crown;
- (h) liens for Taxes if such Taxes are not due and payable; and
- (i) the following instruments registered against title to the Buildings and Lands:

Specific:

Reg. Num.	Date	Instrument Type	Parties From	Parties To
B22893	1958/10/31	Notice Agreement		The Corporation of the Township of North York
66BA760	1961/06/29	Plan Boundaries Act		
E317117	2000/03/27	Notice	Her Majesty The Queen in Right of the Department of Transport Canada	

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NIMBUS ENVIRONMENTAL SOLUTIONS INC., et al

Applicant

Respondents

Court File No. CV-21-00667395-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

APPROVAL AND VESTING ORDER

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