

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) FRIDAY, THE 13TH DAY
JUSTICE THOMAS) OF DECEMBER, 2013

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 ("Banwell") and Royal Timbers Inc. ("Royal Timbers" and collectively with Banwell, the "Companies") pursuant to the Order of The Honourable Justice Thomas dated June 5, 2013 (the "Receiver"), for an order approving the sale transaction (the "Transaction") contemplated by an Agreement of Purchase and Sale dated effective November 22, 2013 (the "APS"), between the Receiver, as vendor, and, and Avila Investments Ltd., as purchaser (the "Purchaser"), in respect of the real property legally described as Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT)) and Block 106 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT)) (collectively, the

"**Commercial Plaza**") and other assets described in the APS (together with the Commercial Plaza, the "**Purchased Assets**"), appended as Appendix "B" to the Confidential Supplement of the Receiver dated December 9, 2013 (the "**Confidential Supplement**"), and vesting in the Purchaser all of Royal Timber's right, title and interest in and to the Commercial Plaza, was heard this day at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

ON READING the Fourth Report to the Court of the Receiver dated December 9, 2013 (the "**Receiver's Fourth 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 Susan Jarrell sworn December 9, 2013, filed:

1. THIS COURT ORDERS that the time for and method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Receiver's Fourth Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that the activities and conduct of the Receiver described in the Receiver's Fourth Report and the Confidential Supplement are hereby approved.

3. THIS COURT ORDERS that the Confidential Supplement be and is hereby sealed until further Order of the Court.

4. 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 Purchased Assets to the Purchaser.

5. 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 Royal Timber's right, title and interest in and to the Purchased Assets and listed on **Schedule "B"** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all leases, subleases and occupancy agreements (other than those forming part of the permitted encumbrances set out on Schedule "D" hereto), 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 Thomas dated June 5, 2013; (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) all claims by the tenants under the Leases (as defined on Schedule "D" hereto) in the Commercial Plaza with respect to year end rent adjustments; (iv) 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 Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. 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 comprising the Commercial Plaza identified in Schedule "B" hereto in fee simple, and is hereby directed to delete and expunge from title to the lands comprising the Commercial Plaza all of the Claims listed in Schedule "C" hereto.

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 Commercial Plaza 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 AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

9. THIS COURT ORDERS that, notwithstanding:

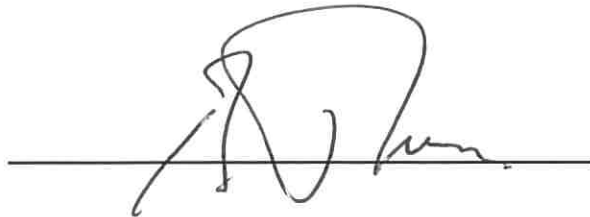
- (a) the pendency of these proceedings;

- (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 Purchased Assets 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.

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

11. 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.

A handwritten signature in black ink, appearing to be 'R. J. ...', is written over a horizontal line.

ENTERED AT WINDSOR	
In Book No.	24
re Document No.	1602
on	Dec. 13 2013
by	HK

Schedule A

Court File No. CV-11-17088

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN D'AMORE

Applicant

- and -

BANWELL DEVELOPMENT CORPORATION, 928579 ONTARIO LIMITED,
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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 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 December 13, 2013, the Court approved an Agreement of Purchase and Sale dated effective November 22, 2013 (the "**APS**") between the Receiver, as vendor, and Avila Investments Limited (the "**Purchaser**") in respect of the real property legally described as Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT)) and Block 106 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT)) (collectively, the "**Commercial Plaza**") and other assets described in the APS (together with the Commercial Plaza, the "**Purchased Assets**"), appended as Appendix "B" to the Confidential Supplement of the Receiver dated December 9, 2013, and

vesting in the Purchaser all of Royal Timbers 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 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 Purchased Assets 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:

Schedule B – Purchased Assets

Commercial Plaza

The lands and premises legally described as:

Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT)); and

Block 106 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT))

(collectively, the “**Commercial Plaza**”),

Other Assets

All leases, easements, rights-of-way or privileges appurtenant or belonging to the Commercial Plaza and together with all buildings, fixtures, chattels, licenses, equipment and machinery owned by the Royal Timbers, if any, located on or at the Commercial Plaza or directly or indirectly used in or arising from or in any manner related to the Commercial Plaza, the buildings or fixtures.

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

Block 105, Plan 12M503, Windsor, Ontario (PIN 01566-0469 (LT))

1. Instrument No. CE163211 – Charge in the principal amount of \$229,123 given by Royal Timbers Inc. to Simba Group Developments Limited and Pat D'Amore registered on August 10, 2005.
2. Instrument No. CE205660 – Charge in the principal amount of \$2,250,000 given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
3. Instrument No. CE205661 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
4. Instrument No. CE205701 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on March 29, 2006.
5. Instrument No. CE207420 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 6, 2006.
6. Instrument No. CE325206 – Charge in the principal amount of \$2,080,000 given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
7. Instrument No. CE325207 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
8. Instrument No. CE325226 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 25, 2008.
9. Instrument No. CE569187 - Notice of Court Order registered on June 18, 2013.

Block 1 06 Plan 12M503, Windsor, Ontario, save & except Part 1 on 12R22290, Windsor, Ontario (PIN 01566-0749 (LT))

1. Instrument No. CE163211 – Charge in the principal amount of \$229,123 given by Royal Timbers Inc. to Simba Group Developments Limited and Pat D'Amore registered on August 10, 2005.
2. Instrument No. CE205660 – Charge in the principal amount of \$2,250,000 given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
3. Instrument No. CE205661 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on March 29, 2006.
4. Instrument No. CE205701 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on March 29, 2006.

5. Instrument No. CE207474 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 6, 2006.
6. Instrument No. CE325206 – Charge in the principal amount of \$2,080,000 given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
7. Instrument No. CE325207 – Notice of Assignment of Rents given by Royal Timbers Inc. to Bank of Montreal registered on April 25, 2008.
8. Instrument No. CE325226 – Postponement given by Simba Group Developments Limited and Pat D'Amore to Bank of Montreal registered on April 25, 2008.
9. Instrument No. CE569187 - Notice of Court Order registered on June 18, 2013.
10. Instrument No. CE513669 - Notice of Lease given by Royal Timbers Inc. to Solar Power Network Inc. registered on April 11, 2012.

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

(unaffected by the Vesting Order)

- (i) The reservations, limitations, provisions and conditions expressed in the original Agreement from the Crown and all statutory exceptions to title;
- (ii) Any registered restrictions or covenants that run with the Commercial Plaza provided the same have been complied with in all material respects;
- (iii) 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 Commercial Plaza;
- (iv) Any agreements with municipal, utilities or public authorities provided the same have been complied with in all material respects;
- (v) Any minor encroachments which might be revealed by an up to date survey of the Commercial Plaza;
- (vi) The following leases (collectively the "Leases"):
 - (a) Lease with Mac's Convenience Stores Inc. dated the 11th day of May, 2005;
 - (b) Lease with Edward Jones, an Ontario Limited Partnership, dated April 14, 2008, amended by agreement made May 23, 2013;
 - (c) Lease with Alexander Daycare Limited (Alexander's Daycare Center) dated December 23, 2006;
 - (d) The Loco Thai Lounge Inc. dated September 25, 2012; and
 - (e) Lease with Bella Vista Hair Design and Day Spa Inc. dated August 2, 2013.
- (vii) Instrument No. 12R15293 – Reference Plan;
- (viii) Instrument No. 12R20732 – Reference Plan;
- (ix) Instrument No. CE51657 – Notice of Subdivision Agreement;
- (x) Instrument No. CE56048 – Notice of Subdivision Agreement;
- (xi) Instrument No. CE58400 – Plan Document;
- (xii) Instrument No. 12M503 – Plan of Subdivision;
- (xiii) Instrument No. 12R21325 – Reference Plan;
- (xiv) Instrument No. CE171086 – Notice;
- (xv) Instrument No. CE194026 – Notice;

KEVIN D'AMORE

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LIMITED, SCOTT D'AMORE and ROYAL
TIMBERS INC.

and

Applicant

Court File No: CV-11-17088

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

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