



Court File No. CV-21-00664273-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )

JUSTICE MCEWEN )

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)  
)

TUESDAY, THE 15th

DAY OF JULY, 2022

B E T W E E N:

AMERICAN GENERAL LIFE INSURANCE COMPANY,  
LEXINGTON INSURANCE COMPANY, AND  
THE VARIABLE ANNUITY LIFE INSURANCE COMPANY

Applicants

- and -

SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658  
ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH  
HOLDINGS INC., 100 COLBORNE HOLDINGS INC., 240 OLD  
PENETANGUISH HOLDINGS INC., GROSS PROPERTIES INC., 180 VINE  
PURCHASER INC., AND 2413667 ONTARIO INC.

Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**DISTRIBUTION AND ANCILLARY MATTERS ORDER**

**THIS MOTION**, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “A”** (the “**Real Property**”) of the Appointment Order granted on June 29, 2021 (the “**Appointment Order**”) of:

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(i) Southmount Healthcare Centre Inc. (formerly Carriage Gate Group Inc.) (“**Southmount**”), 180 Vine Inc. (“**Vine Co.**”), 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the “**Legal Owners**”) acquired for, or used in relation to the Legal Owners’ business, including any interest held by Vine Co. to which Her Majesty the Queen in Right of Ontario (the “**Crown**”) may have rights and any interest in the applicable real property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the “**Legal Owners’ Property**”), and (ii) 180 Vine Purchaser Inc. (“**Vine Purchaser Co.**”), Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owners, the “**Debtors**”), but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owners’ Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (together with the Legal Owners’ Property, the “**Receivership Assets**”), for an Order, among other things:

- (i) authorizing the Receiver to pay commissions to CBRE Limited (the “**Broker**”);
- (ii) authorizing the Receiver to make certain additional distributions to the Applicants;
- (iii) procedurally consolidating the bankruptcy proceedings of Southmount, Vine Purchaser Co. with the bankruptcy proceedings of the other Legal Owners and Victoria Avenue North Holdings Inc. (“**Victoria Avenue**”);
- (iv) approving the activities of the Receiver, as set out in the Supplement to the Second Report of the Receiver dated May 20, 2022 (the “**Supplemental Report**”) and the Receiver’s Third Report dated July 5, 2022 (the “**Third Report**”); and
- (v) sealing Confidential Appendices “A” and “B” to the Third Report (such Confidential Appendices being, collectively, the “**Confidential Appendices**”);

was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Receiver's Notice of Motion, the Receiver's First Report dated October 21, 2021, the Receiver's Second Report dated May 13, 2022 and the appendices thereto (the "**Second Report**"), the Supplemental Report and the appendices thereto, the Third Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver's Motion Record as appears from the affidavit of Alexia Parente sworn July 6, 2022 (the "**Parente Affidavit**"):

**SERVICE**

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Parente Affidavit are hereby abridged and validated, so that this motion is properly returnable today.

**PAYMENT OF BROKER COMMISSIONS**

2. **THIS COURT ORDERS AND DECLARES** that the Receiver is authorized and directed to pay the Commissions (as defined in the Third Report) to the Broker as and when the applicable sale transactions close, out of the proceeds thereof, in each case in such amounts as are prescribed by the terms of the broker listing agreement dated as of October 20, 2021 among the Debtors and the Broker.

**RESERVE AND DISTRIBUTIONS**

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to distribute to the Applicants by way of one or more distributions from the Net Proceeds of Sale (as defined in the Third Report) and any other funds in the possession of the Receiver, at the time or times determined by the Receiver, in its sole discretion, subject to the maintenance of a reserve, in an

amount satisfactory to the Receiver, in consultation with the Applicants, or in an amount otherwise ordered by the Court, to: (i) fund the fees and disbursements of the Receiver and its counsel, (ii) fund operating costs and expenses of the Debtors incurred in relation to the Receivership Assets since the date of the Appointment Order, (iii) secure the obligations under the Receiver's Charge (as defined in the Appointment Order), and (iv) fund the Bankruptcy Costs (defined below), and (v) satisfy any claim of Enersavings Inc. in respect of the 65 Larch Construction Lien (as defined in the Third Report) to the extent that such claims rank senior to the claims of the Applicants against the Net Proceeds of Sale (as determined by the agreement amongst Enersavings Inc., the Applicants and the Receiver or ordered by the Court) in an amount not to exceed \$160,252.

#### **PROCEDURAL CONSOLIDATION**

4. **THIS COURT ORDERS** that following any assignment in bankruptcy by or on behalf of Southmount and Vine Purchaser Co., KPMG Inc. in its capacity as bankruptcy trustee of Vine Purchaser Co., Southmount and the other Legal Owners (collectively, the "**Bankruptcy Legal Owners**") and Victoria Avenue (in such, the "**Trustee**"), shall be entitled to administer the procedural matters relating to those bankruptcy proceedings on a consolidated basis (the "**Consolidated Proceedings**") and a copy of this order will be filed in the court file for each of the estates of the Bankruptcy Legal Owners and Victoria Avenue.

5. **THIS COURT ORDERS** that the Trustee is authorized to carry out its administrative duties and responsibilities as trustee in bankruptcy as if the Consolidated Proceedings were a single proceeding under the *Bankruptcy and Insolvency Act* (Canada), including without limitation:

- (i) the meetings of creditors of the Bankruptcy Legal Owners and Victoria Avenue may be convened and conducted jointly,
- (ii) the Trustee is authorized to issue consolidated reports in respect of the Bankruptcy Legal Owners and Victoria Avenue; and
- (iii) the Trustee is authorized to deal with all filings and notices relating to the bankruptcies of the Bankruptcy Legal Owners and Victoria Avenue on a consolidated basis.

6. **THIS COURT ORDERS** that the Consolidated Proceedings will be in relation to procedural matters only and do not:

- (i) affect the separate legal status of the corporate structure of the Bankruptcy Legal Owners and Victoria Avenue;
- (ii) cause any of the Bankruptcy Legal Owners or Victoria Avenue to be liable for any claim for which it is otherwise not liable, or cause any of the Bankruptcy Legal Owners or Victoria Avenue to have any interest in any asset which it otherwise would not have; or
- (iii) affect the Bankruptcy Legal Owners' or Victoria Avenue's filing obligations under the Bankruptcy and Insolvency Act (Canada).

7. **THIS COURT ORDERS** that the Receiver shall be permitted to transfer to the Trustee from time to time funding for costs associated with the bankruptcies of Southmount and Vine Purchaser Co., as determined by the Receiver in consultation with the Applicants (the "**Bankruptcy Costs**") and, for greater certainty, the Trustee shall be entitled to maintain a single estate trust account in respect of the funds received by it from the Receiver in respect of the

bankruptcy proceedings of all the Bankruptcy Legal Owners, to the extent such bankruptcy proceedings are procedurally consolidated.

#### **APPROVAL OF REPORTS & ACTIVITIES**

8. **THIS COURT ORDERS** that the Supplemental Report, the Third Report and the activities of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

#### **SEALING ORDER**

9. **THIS COURT ORDERS** that the Confidential Appendices are hereby sealed and shall not form part of the public record.

#### **MISCELLANEOUS**

10. **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 'M. J. ...', is written over a horizontal line.

AMERICAN GENERAL LIFE INSURANCE COMPANY, *et al.*  
Applicants

- and -

SOUTHMOUNT HEALTHCARE CENTRE INC., *et al.*  
Respondents

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding Commenced at Toronto

**DISTRIBUTION AND ANCILLARY  
MATTERS ORDER**

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