



Court File No. CV-23-00703534-00CL

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

THE HONOURABLE

)

WEDNESDAY, THE 24TH

)

JUSTICE CONWAY

)

DAY OF APRIL, 2024

**IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985,
c. B-3, as amended and section 101 of the *Courts of Justice Act*, RSO 1990, c. C43,
as amended**

B E T W E E N:

HSBC BANK CANADA

Applicant

- and -

DMI EXIM LIMITED

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by KPMG Inc. in its capacity as Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all of the undertaking, property and assets of DMI Exim Limited (the “**Debtor**”), including, but not limited to, the real property described in Schedule “A” hereto (the “**Real Property**”), for an Order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale dated December 22, 2023, as subsequently amended (as amended, the “**Sale Agreement**”) between the Receiver and North Medafix Corporation (the “**Purchaser**”), appended to the First Report of the Receiver dated April 4, 2024 (the “**Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in

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and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day by way of videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver and such other parties listed on the Counsel Slip, no one else appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Maria Magni sworn April 8, 2024, filed:

SERVICE

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

APPROVAL AND VESTING

2. **THIS COURT ORDERS** 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** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “B” hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement on “as is, where is” basis, including the Real Property described on Schedule “A” hereto, shall vest absolutely in the Purchaser, free and clear of and from any and all

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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 Penny dated August 1, 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 “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 Peel (LRO #43) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Real Property identified in Schedule “A” hereto, 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

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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; and
- (b) the Debtor's bankruptcy;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on the Debtor's trustee in bankruptcy 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.

SEALING

8. **THIS COURT ORDERS** that Confidential Appendices "A" and "B" to the Report, being (i) a summary of the offers received in the process leading to the sale of the Real Property; and (ii) an unredacted copy of the Sale Agreement, are hereby sealed until execution and delivery of the Receiver's Certificate.

GENERAL

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.

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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.

10. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without further need for entry and filing.



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Schedule “A” – Purchased Assets

Real Property

PIN19287-0005(LT): UNIT 5, LEVEL 1, PEEL CONDOMINIUM PLAN NO. 287; PT BLKS G, H & I PL 548, PT 1 43R10656, MORE FULLY DESCRIBED IN SCHEDULE 'A' OF DECLARATION LT839260; MISSISSAUGA,

and municipally known as Unit 3, 10 Falconer Drive, Mississauga, Ontario.

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Schedule “B” – Form of Receiver’s Certificate

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

HSBC BANK CANADA

Applicant

- and -

DMI EXIM LIMITED

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the “**Court**”) dated August 1, 2023, KPMG Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of DMI Exim Limited (the “**Debtor**”).

B. Pursuant to an Order of the Court dated April 24, 2024, the Court approved the agreement of purchase and sale dated December 22, 2023, as subsequently amended (as amended, the “**Sale Agreement**”) between the Receiver and North Medafix Corporation (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’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 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.

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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 section ● 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].

**KPMG Inc., in its capacity as Receiver of the
undertaking, property and assets of DMI
Exim Limited, and not in its personal capacity**

Per: _____

Name:

Title:

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

PIN19287-0005 (LT)

Instrument No.	Date	Instrument Type	Parties From	Parties To
PR3761442	2021/01/08	Transfer	2430729 Ontario Inc.	DMI Exim Limited
PR3829822	2021/05/07	Charge	DMI Exim Limited	HSBC Bank Canada
PR3829823	2021/05/07	Notice Of Assignment Of Rents-General	DMI Exim Limited	HSBC Bank Canada
PR4232510	2023/08/02	Application To Register Court Order	Ontario Superior Court of Justice (Commercial List)	KPMG Inc.

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

Specific:

Instrument No.	Date	Instrument Type	Parties From	Parties To
RO621268	1982/10/08	Certificate		
LT635075	1986/04/22	Notice		
LT839260	1988/01/11	Declaration Condo		Falcon Court Centre Inc.
LT850338	1988/02/17	BYLAW No. 1		
LT850339	1988/02/17	BYLAW No. 2		
LT850340	1988/02/17	BYLAW No. 3		
LT1565480	1995/05/26	BYLAW No. 4		
LT2057426	2000/03/27	Notice	Her Majesty The Queen In Right Of The Department Of Transport Canada	
PR852235	2005/05/18	Application (General)	Peel Condominium Corporation No. 287	

General:

Any of the following encumbrances constitute as Permitted Encumbrances:

1. **Minor Encroachments:** Minor encroachments from the Real Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and any fences or concrete curbs and minor encroachments over the Real Property from neighbouring land and/or permitted under agreements with neighbouring landowners and any fences and concrete curbs.
2. **Crown Grant:** Any subsisting restrictions, exceptions, reservations, limitation, provisos and conditions (including, with limitation, royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grants from the Crown of the lands comprising the Real Property and any statutory limitations, exceptions, reservations and qualifications.
3. **Restrictions, Zoning, etc.:** Zoning, land use and building restrictions, by-laws, regulations and ordinances of any Governmental Authority, including municipal by-laws and regulations, airport zoning regulations, restrictive covenants and other land use limitations in favour of or imposed or reserved by any Governmental Authority.
4. **Work Orders:** Any and all Work Orders issued by any Governmental Authority.

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5. **Easements:** Any unregistered or registered easements required for the supply of domestic utility services to the Real Property.
6. **Survey matters:** Encroachments, deficiencies or other matters disclosed by any plan of survey in respect of the Real Property or any part thereof.
7. **Taxes/Utilities:** Encumbrances or prior claims for Real Property taxes (which term includes charges, rates and assessments) or charges or levies for electricity, power, gas, water and other services and utilities in connection with the Real Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
8. **Restrictive Covenants:** Restrictive covenants, private deed restrictions, rights-of-way, facility cost sharing agreements, servicing agreements, crane swing/tie back agreements, reciprocal use agreements or other similar land use control agreements or rights in land (including, without limitation, restrictions, rights-of-way and servitudes for sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to other persons or property, or reserved by other persons or the benefit of other property.
9. **Applicable Laws:** The provisions of all Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning at the Real Property.
10. **Land Titles Act:** The exceptions and qualifications contained in Section 44 of *the Land Titles Act* (Ontario), save and except paragraph 5 thereof relating to the *Family Law Act*, paragraph 11 thereof respecting the *Planning Act* (Ontario) and escheats/forfeiture to the Crown.
11. **Registered Agreements:** Registered agreements with any Governmental Authorities or public utilities, including subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements.

IN THE MATTER OF section 243(1) of the Bankruptcy and Insolvency Act, RSC 1985, c. B-3, as amended and section 101 of the Courts of Justice Act, RSO 1990, c. C43, as amended

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- and -

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Applicant

Respondent

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

Proceedings commenced at Toronto, Ontario

APPROVAL AND VESTING ORDER

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