



Court File No. CV-11-9306-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 11TH DAY
)
JUSTICE *CUMMING*) OF OCTOBER, 2011

BETWEEN:

BANK OF MONTREAL

Applicant

-and-

OWEN SOUND GOLF AND COUNTRY CLUB, LIMITED
and KENNETH W. ROWE LIMITED

Respondents

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited (the “**Receiver**”) in its capacity as the Court-appointed receiver and manager of all of the assets, undertakings and properties of Owen Sound Golf and Country Club, Limited and Kenneth W. Rowe Limited (the “**Debtors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement dated September 2, 2011 (the “**Sale Agreement**”) between the Receiver and Kinsale Investments Limited (the “**Purchaser**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report to Court of the Receiver and on hearing the submissions of counsel for the Receiver, counsel for Bank of Montreal and counsel for the Purchaser, no one appearing for any other person on the service list:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtors and their stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and 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.

2. **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 the Receiver's and all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, 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 Lederer dated July 15, 2011; (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.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Grey County (No. 16) of an Application or Applications 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 parties indicated on Schedule B as the owner of the subject real property identified in Schedule B hereto (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, but the permitted encumbrances shown on Schedule D shall remain registered on title.

4. **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.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **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 the Purchaser, if deemed necessary by the Receiver, all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchaser 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 Debtors.

7. **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 Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

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 the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance 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.

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

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. 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.

Oct 11, 2011 Peter A. Cumming J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 11 2011

RECEIVED:

MB

Schedule A – Form of Receiver’s Certificate

Court File No. CV-11-9306-00CL

**ONTARIO
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B E T W E E N:

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OWEN SOUND GOLF AND COUNTRY CLUB, LIMITED
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Respondents

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

RECITALS

A. Pursuant to an Order of the Honourable Justice Lederer of the Ontario Superior Court of Justice (the “**Court**”) dated July 15, 2011, BDO Canada Limited was appointed as the receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of Owen Sound Golf and Country Club, Limited and Kenneth W. Rowe Limited (together, the “**Debtors**”), (collectively, the “**Property**”).

B. Pursuant to an Order of the Court dated October 11, 2011, the Court approved the asset purchase agreement between the Receiver and Kinsale Investments Limited (the “**Purchaser**”) dated September 2, 2011 (the “**Sale Agreement**”) and provided for the vesting in the Purchaser of the Receiver’s and the Debtors’ 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 sections 8, 9 and

10 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 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], 2011.

BDO CANADA LIMITED, in its capacity as the Court-Appointed Receiver over the assets, undertakings and properties of Owen Sound Golf and Country Club, Limited and Kenneth W. Rowe Limited and not in its personal or corporate capacity

Per: _____
Name:
Title:

Schedule B – Legal Description of Properties

All of the Receiver’s (if any) and the Debtors’ right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement) including, without limitation, the following real property:

The Owen Sound Golf & County Club, consisting of the real property located at 318494 Westshore Road / Grey Rd. #1, Township of Georgian Bluffs, Province of Ontario, together with the buildings situate thereon and certain other amenities and related facilities, legally described as:

	Property	Party Taking Title
1.	PIN 37039-0120 (LT) – Part of Lots 13 and 14, Concession 2 (Geographic Township of Sarawak), designated as Part 1 on Plan 16R-4839; S/T SK5457 and SK5458; Township of Georgian Bluffs -	Kinsale Investments Limited
2.	PIN 37039-0119 (LT) – Part of Lot 15, Concession 2 (Geographic Township of Sarawak), designated as Part 2 on Plan 16R-4839; Township of Georgian Bluffs -	Enberry Developments Inc.
3.	PIN 37039-0121 (LT) – Part of Lot 14, Concession 2 (Geographic Township of Sarawak), designated as Part 3 on Plan 16R-4839; S/T SK5458; Township of Georgian Bluffs	Enberry Developments Inc.
4.	PIN 37039-0309 (LT) – Part of Lots 13 to 15, Concession 3 (Geographic Township of Sarawak), designated as Part 4 on Plan 16R-4839; S/T R350368; Township of Georgian Bluffs	Enberry Developments Inc.
5.	PIN 37039-0340 (LT) – Part of the Road Allowance between Concession 2 and Concession 3 (Geographic Township of Sarawak), designated as Part 5 on Plan 16R-4839; S/T the interest of the Municipality; Township of Georgian Bluffs	Enberry Developments Inc.

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

The following Instruments are to be discharged upon registration of the Vesting Order:

PIN 37030-0119 (LT)

6. Charge/Mortgage of Land from Owen Sound Golf and Country Club, Limited and Kenneth W. Rowe Limited (collectively the “**Debtors**”) in favour of Bank of Montreal (“**BMO**”), securing the principal sum of \$1,000,000.00 registered on July 24th, 2001 as Instrument No. R437699;
7. Mortgage Amendment Agreement dated October 1st, 2004 between the Debtors and BMO, registered on October 21st, 2004 as Instrument No. R492962; and
8. Application to Register Court Order re Order of the Ontario Superior Court of Justice dated July 15th, 2011 appointing BDO Canada Limited (“**BDO**”) as receiver, registered July 20th, 2011 as Instrument No. GY50138.

PIN 37030-0120 (LT)

1. Charge/Mortgage of Land from the Debtors in favour of BMO, securing the principal sum of \$1,000,000.00 registered on July 24th, 2001 as Instrument No. R437699;
2. Mortgage Amendment Agreement dated October 1st, 2004 between the Debtors and BMO, registered on October 21st, 2004 as Instrument No. R492962; and
3. Application to Register Court Order re Order of the Ontario Superior Court of Justice dated July 15th, 2011 appointing BDO as receiver, registered July 20th, 2011 as Instrument No. GY50138.

PIN 37030-0121 (LT)

1. Charge/Mortgage of Land from the Debtors in favour of BMO, securing the principal sum of \$1,000,000.00 registered on July 24th, 2001 as Instrument No. R437699;
2. Mortgage Amendment Agreement dated October 1st, 2004 between the Debtors and BMO, registered on October 21st, 2004 as Instrument No. R492962; and
3. Application to Register Court Order re Order of the Ontario Superior Court of Justice dated July 15th, 2011 appointing BDO as receiver, registered July 20th, 2011 as Instrument No. GY50138.

PIN 37030-0340 (LT)

1. Charge/Mortgage of Land from the Debtors in favour of BMO, securing the principal sum of \$1,000,000.00 registered on July 24th, 2001 as Instrument No. R437699;

2. Mortgage Amendment Agreement dated October 1st, 2004 between the Debtors and BMO, registered on October 21st, 2004 as Instrument No. R492962; and
3. Application to Register Court Order re Order of the Ontario Superior Court of Justice dated July 15th, 2011 appointing BDO as receiver, registered July 20th, 2011 as Instrument No. GY50138.

PIN 37030-0309 (LT)

1. Charge/Mortgage of Land from the Debtors in favour of BMO, securing the principal sum of \$1,000,000.00 registered on July 24th, 2001 as Instrument No. R437699;
2. Mortgage Amendment Agreement dated October 1st, 2004 between the Debtors and BMO, registered on October 21st, 2004 as Instrument No. R492962; and
3. Application to Register Court Order re Order of the Ontario Superior Court of Justice dated July 15th, 2011 appointing BDO as receiver, registered July 20th, 2011 as Instrument No. GY50138.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

Permitted Encumbrances with respect to the Owen Sound Golf and Country Club means:

- (a) All of the instruments set out in this Schedule “D”;
- (b) Any easements, servitudes, rights-of-way, licences, restrictions that run with the land and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
- (c) Defects or irregularities in title to the Purchased Assets;
- (d) Inchoate liens for municipal property taxes, local improvement assessments and/or taxes and/or charges, and/or other taxes, assessments or recoveries relating to the Purchased Assets not yet due or liens for same which are due but the validity of which are being contested in good faith by the Receiver, provided that the Receiver has provided security which in the opinion of the Purchaser, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
- (e) Zoning and building by-laws and ordinances, municipal by-laws and regulations, development agreements, subdivision agreements, site plan agreements, notices, and/or building restrictions;
- (f) Inchoate liens for public utilities not due as at the closing date;
- (g) The exceptions, limitations and qualifications set out in the *Land Titles Act* and/or set out on the parcel registers for the Purchased Assets and any amendments thereto;
- (h) All reservations, limitations, provisos and/or conditions set out in the original grant from the Crown; and
- (i) All encroachments of buildings or other improvements and/or mislocated fences that may be shown on any existing survey or any up-to-date survey for the Purchased Assets.

Without limiting the foregoing, Permitted Encumbrances include the following:

PIN 37039-0119 (LT)

1. Order made under the *Planning Act* registered on June 11th, 1969 as Instrument No. R109894;
2. Reference Plan No. 16R-4839 registered March 11th, 1991.

PIN 37039-0120 (LT)

1. Transfer of Easement in favour of The Hydro-Electric Power Commission of Ontario registered February 28th, 1951 as Instrument No. SK5457;
2. Transfer of Easement in favour of The Hydro-Electric Power Commission of Ontario registered February 28th, 1951 as Instrument No. SK5458;
3. Order made under the *Planning Act* registered on June 11th, 1969 as Instrument No. R109894;
4. Reference Plan No. 16R-4839 registered March 11th, 1991.

PIN 37039-0121 (LT)

1. Transfer of Easement in favour of The Hydro-Electric Power Commission of Ontario registered February 28th, 1951 as Instrument No. SK5458;
2. Order made under the *Planning Act* registered on June 11th, 1969 as Instrument No. R109894;
3. Reference Plan No. 16R-4839 registered March 11th, 1991.

PIN 37039-0340 (LT)

1. Reference Plan No. 16R-4839 registered March 11th, 1991.

PIN 37039-0309 (LT)

1. Reference Plan No. RD73 registered April 14th, 1969;
2. Order made under the *Planning Act* registered on June 11th, 1969 as Instrument No. R109894;
3. Easement Agreement dated April 8th, 1987 between The Owen Sound Golf and Country Club, Limited and The Corporation of the Township of Sarawak registered November 30th, 1987 as Instrument No. R259070;
4. Reference Plan No. 16R-4839 registered March 11th, 1991; and
5. Transfer of Easement dated August 30th, 1994 from Owen Sound Golf and Country Club, Limited in favour of Union Gas registered October 12th, 1994 as Instrument No. R350368.

BANK OF MONTREAL
Applicant

-and-
Respondents

OWEN SOUND GOLF AND COUNTRY CLUB, LIMITED et al.

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PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

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RCP-E 4C (July 1, 2007)