

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 12TH
)
JUSTICE DUNPHY) DAY OF MAY, 2021

B E T W E E N:

FIRST SOURCE FINANCIAL MANAGEMENT INC.

Applicant

-and-

UNIONVILLE RE-DEV CORPORATION,
UNIONVILLE RE-DEV PHASE 2 CORPORATION and
BLACKSMITH PARTNERS INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed Receiver (the "**Receiver**") of all of the properties municipally known as 160, 162, 166, 170, 174-178 and 186 Main Street, Unionville, including all proceeds thereof (collectively, the "**Properties**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and WATFORD DEVELOPMENT INC. a company incorporated in accordance with the laws of the province of Ontario, in trust for a company to be incorporated, without liability and AJAY MEHRA, RAFFI

TOKMAKJIAN, SYLVIA TOKMAKJIAN, HRIPSIME (HELEN) TOKMAKJIAN and BERARDINO D'AMATO, in their respective personal capacities, in trust for one or more companies to be incorporated and without personal liability (collectively, the "**Purchaser Group**") dated April 15, 2021 and appended as a Confidential Appendix to the Second Report of the Receiver dated May 6, 2021 (the "**Report**") and, as requested by the Purchaser Group, vesting in 174-178 Main Street Limited (the "**Purchaser**") all right, title and interest of each of UNIONVILLE RE-DEV CORPORATION, UNIONVILLE RE-DEV PHASE 2 CORPORATION and/or BLACKSMITH PARTNERS INC. (collectively, the "**Debtors**") in and to the assets set out at Schedule "B" hereto (the "**Purchased Assets**"), was heard this day by zoom videoconference.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for the Purchaser Group, and counsel for the Applicant creditor,

1. THIS COURT ORDERS that the Receiver is hereby authorized and directed to carry out the Sale Agreement with the Purchaser Group for the sale of all of the right, title and interests of the Debtors, or any of them, in and to the Purchased Assets.
2. THIS COURT ORDERS AND DECLARES 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 AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser Group substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule "B" hereto 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 Gilmore dated October 16, 2020; (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 York Region (#65) 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 subject real Properties 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.

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 completion of 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, notwithstanding:

- i) the pendency of these proceedings;
- ii) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- iii) any assignment in bankruptcy made in respect of any 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, or any of them, and shall not be void or voidable by creditors of the Debtors, 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.

8. 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.


S.F. DUNPHY J.

Schedule "A" - Form of Receiver's Certificate

Court File No. CV-20-00647644-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

FIRST SOURCE FINANCIAL MANAGEMENT INC.

Applicant

-and-

UNIONVILLE RE-DEV CORPORATION,
UNIONVILLE RE-DEV PHASE 2 CORPORATION and
BLACKSMITH PARTNERS INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

RECEIVER'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Gilmore of the Ontario Superior Court of Justice (the "**Court**") dated October 16, 2020, effective as of October 27, 2020, RSM Canada Limited was appointed the receiver (the "**Receiver**") of the properties municipally known as 160, 162, 166, 170, 174-178, and 186 Main Street, Unionville, Ontario, including all proceeds thereof (collectively, the "**Properties**").
- B. Pursuant to an Order of the Court dated May 12, 2021 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale made as of April 15, 2021 (the "**Sale Agreement**") between the Receiver and WATFORD DEVELOPMENT INC. a company incorporated in accordance with the laws of the province of Ontario, in trust for a company to be incorporated, without liability and AJAY MEHRA, RAFFI TOKMAKJIAN, SYLVIA TOKMAKJIAN, HRIPSIME (HELEN) TOKMAKJIAN and

BERARDINO D'AMATO, in their respective personal capacities, in trust for one or more companies to be incorporated and without personal liability (the "**Purchaser Group**") and provided for the vesting in 174-178 Main Street Limited (the "**Purchaser**") of the Receiver's and UNIONVILLE RE-DEV CORPORATION'S, UNIONVILLE RE-DEV PHASE 2 CORPORATION'S and/or BLACKSMITH PARTNERS INC.'S respective right, title and interest in and to the Purchased Assets, as defined in the Vesting Order, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser Group of a certificate confirming (i) the payment by the Purchaser Group of the full Purchase Price set out in the Sale Agreement; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser Group; 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 or the Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser Group has paid and the Receiver has received the full Purchase Price set out in the Sale Agreement as payable on the Date of Closing;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser Group;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at [TIME] on ► [DATE].

RSM Canada Limited, solely in its capacity as Court-appointed receiver of the properties municipally known as 160, 162, 166, 170, 174-178, and 186 Main Street, Unionville, Ontario, and not in its personal or corporate capacity and without personal or corporate liability

Per:

Schedule "B" - Purchased Assets

All of the Receiver's (if any) and the Debtors' respective right, title and interest in and to the following real property and all Buildings (as defined in the Sale Agreement) located thereon:

- (a) PIN: 02979-0124 (LT)
MUNICIPAL ADDRESS: 174-178 Main Street, Unionville, Ontario
LEGAL DESCRIPTION: PT LT 12 CON 5 MARKHAM PTS 1 & 2, 64R7629;
S/T MA58258; CITY OF MARKHAM
- (b) PIN: 02979-0126 (LT)
MUNICIPAL ADDRESS: 186 Main Street, Unionville, Ontario
LEGAL DESCRIPTION: PT LT 12 CON 5 MARKHAM AS IN R371141; S/T
& T/W R371141; MARKHAM

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:

1. Instrument No. YR2957465 registered May 6th, 2019 is a Charge in favour of First Source Financial Management Inc. (“First Source”) in the amount of \$16,285,256;
2. Instrument No. YR2957466 registered May 6, 2019 is a Notice of Assignment of Rents - General in favour of First Source in relation to the Charge registered as Instrument No. YR2957465;

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

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to the Properties (as defined in the Sale Agreement) means:

1. The exceptions and qualifications set out in the *Land Titles Act* (Ontario) and/or on one or more of the parcel registers for the Properties;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any registered or unregistered 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);
4. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due or liens for same which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
5. Any encroachments, minor defects or irregularities indicated on any survey of one or more of the Properties or which may be disclosed on any up-to-date survey of one or more of the Properties;
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
7. Any breaches of any applicable laws, including, without limitation, outstanding building permits, work orders and deficiency notices;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. The Leases; and
10. Without in any way limiting the generality of any of the foregoing, the following specific instruments registered on title against the Properties:

PIN 02979-0124 (LT)

- (i) Instrument No. MA109118 registered January 29, 1980 is an Agreement with the Town;
- (ii) Instrument No. R488826 registered November 15th, 1988 is a Notice re Airport Zoning Regulations;
- (iii) Instrument No. R529314 registered December 11, 1989 is a Site Plan Control Agreement with the Town;
- (iv) Instrument No. YR687893 registered August 22, 2005 is a Notice from Her Majesty the Queen in Right of Canada as represented by the Minister of Transport;
- (v) Instrument No. YR789570 registered March 14th, 2006 is a By Law designating an area of the Town as a Heritage Conservation District; and
- (vi) Instrument No. YR2623310 registered February 8, 2017 is a Transfer of Property from Business Point Inc. to Unionville Re-Dev Corporation.

PIN 02979-0126 (LT)

- (i) Instrument No. R384879 registered November 28, 1985 is a Site Plan Control Agreement with the Town;
- (ii) Instrument No. R488826 registered November 15th, 1988 is a Notice re Airport Zoning Regulations;
- (iii) Instrument No. R720692 registered April 29, 1998 is an Agreement amending Instrument No. R384879 between Mariani's Custom Clothier Ltd. and the Town;
- (iv) Instrument No. YR687893 registered August 22, 2005 is a Notice from Her Majesty the Queen in Right of Canada as represented by the Minister of Transport;
- (v) Instrument No. YR789570 registered March 14th, 2006 is a By Law designating an area of the Town as a Heritage Conservation District; and
- (vi) Instrument No. YR2957464 registered May 6, 2019 is a Transfer of the Property from Mariani's of Unionville Inc. to Unionville Re-Dev Corporation.

FIRST SOURCE FINANCIAL MANAGEMENT INC.
Applicant

-and-

UNIONVILLE RE-DEV CORPORATION et al.
Respondents

Court File No. CV-20-00647644-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

TORKIN MANES LLP

Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom (55695C)

sthom@torkinmanes.com

Tel: 416-777-5197

Fax: 1-877-689-3872

Lawyers for the Receiver, RSM Canada Limited

RCP-E 4C (May 1, 2016)