

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE *MR.*)
JUSTICE *M. D. PARAYESKI*)

TUESDAY, THE 3rd
DAY OF SEPTEMBER, 2019

B E T W E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

AMAX HEALTH INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Amax Health Inc. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and 11509349 Canada Inc. (the "Purchaser") dated August 22, 2019, and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at the Court House, 45 Main Street, Hamilton, Ontario.

ON READING the Second Report of the Receiver, dated August 22, 2019 (the "Second Report") and on hearing the submissions of counsel for the Receiver, and

counsel for the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Elizabeth Wise sworn August 22, 2019 filed:

1. THIS COURT ORDERS that any requirement for service of the Notice of Motion, the Second Report, and Motion Record be and is hereby abridged, that the Motion is property returnable today and all parties requiring notice of this Motion have been duly served and that service on all parties is hereby validated and any further service is hereby dispensed with.

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 substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets listed on Schedule B hereto, and more particularly 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 Mr. Honourable Justice Whitten dated June 4, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Acts* of the provinces of British Columbia, Alberta and Ontario or any other personal property registry systems including but limited to the Registre des Droits Personnels et Reels Mobiliers of the province of Quebec (all of which are collectively referred to as the "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.

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 all personal information in the Debtor's records pertaining to the Debtor's past and current individual customers. 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 Debtor.

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

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 Debtor 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.

8. THIS COURT ORDERS that the Second Report is both accepted and approved by this Honourable Court.

9. THIS COURT ORDERS that the conduct, activities and actions of the Receiver as set out in the Second Report are both authorized and approved.

10. THIS COURT ORDERS that the Receiver's interim Statement of Receipt & Disbursements as at August 16, 2019 as detailed in the Second Report are approved.

11. THIS COURT ORDERS that the Receiver is hereby authorized to file an assignment in bankruptcy on behalf of the Debtor.

12. THIS COURT ORDERS that the Confidential Appendices 1 and 2 as defined in the Second Report are hereby sealed and shall be segregated from other documents filed in connection with this motion and shall be provided to the Court in a sealed envelope identifying the action and prominently marked with the following legend:

“CONFIDENTIAL INFORMATION”

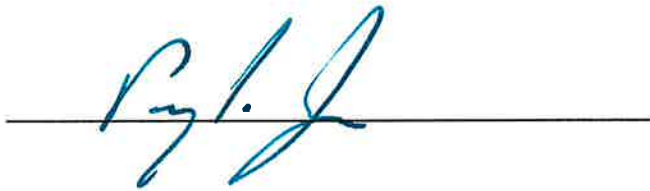
Pursuant to an Order, dated August 29, 2019 (the “Order”), this envelope shall remain sealed in the court file and shall not be opened until further order of the Court.

And the sealed envelope shall be sealed until the completion of the Sale Agreement or further order of this Court. Upon the Court making such further order under this

paragraph, the Receiver shall forthwith advise the Service List by email of the order, and shall provide a copy of the Confidential Appendices to any party who requests it.

13. THIS COURT ORDERS that the Receiver's fees and disbursements for the period of July 1, 2019 to July 31, 2019 and the fees and disbursements of its counsel, Scarfone Hawkins LLP, for the period of July 11, 2019 to August 9, 2019 as detailed in the Second Report, are approved and the Receiver is authorized to pay them.

14. 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.



ENTERED AT HAMILTON
IN Book No. 355
as Document No. 50
on: SEP 03 2019
by: J. Maclellan

Schedule A – Form of Receiver’s Certificate

Court File No. 19-69485

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

AMAX HEALTH INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Whitten of the Ontario Superior Court of Justice (the "Court") dated June 4, 2019, RSM Canada Limited was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Amax Health Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated August 29, 2019, the Court approved the agreement of purchase and sale made as of August 22, 2019 (the "Sale Agreement") between the Receiver and 11509349 Canada Inc. (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.

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 _____ on _____.

RSM CANADA LIMITED, in its capacity as Receiver of the undertaking, property and assets of Amax Health Inc., and not in its personal capacity

Per: _____

Name: Bryan A. Tannenbaum

Title: President

Schedule B – Purchased Assets

(more particularly described in the Sale Agreement)

- Office Furniture and Equipment – St. Catharines, ON
- Office Furniture and Equipment – Calgary, AB
- Office Furniture and Equipment – Rigaud, QC
- Warehouse Equipment – St. Catharines, ON
- Warehouse Equipment – Calgary, AB
- Brand name and rights – Cheeta
- Inventory – Cheeta
- Inventory - 3M
- Inventory – GC America, Coltene Whaledent, Premier, Hu-Friedy, Paradis Dental Technologies, American Eagle, Hartzell
- Inventory – Diadent Zirc, Buffalo Dental, Waterpik, SS White, Microbrush, Keystone Technologies, various others
- Inventory – Pulpdent, DMG, Septodont, Carestream, Danville, Johnson & Johnson, Juraray, Monoject, Young Dental, Tokuyama, various others
- Inventory – Disposables and Cleaners (i.e. gloves, masks, paper products, surface cleaners, etc.)
- Inventory – Private Label Other
- Customer List

- The Debtor's rights and interest in and to the licensed Sage 3000 (2018) Enterprise Resource Planning System, together with all the Debtor's data and information associated therewith that resides on the third party server
- all rights of the Debtor, if any, in and to the names "Amax Health", "Amax Dental" and "Cheeta", including without limitation, any trademark rights in or to such names and any associated logos or designs (including for clarity, Canadian trademark application # 1829637 – Cheeta & design, and Canadian trademark application # 1831679 – Amax Dental & design), any rights to use the said names as a tradename, business name or corporate name, and any other intellectual property rights in and to the said names in any jurisdiction, whether registered or unregistered, and any goodwill associated with the foregoing
- all books, records, data and information of the Debtor relating to the foregoing (but excluding the minute book of the Debtor)

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-and- **AMAX HEALTH INC.**
Respondent

Court File No. 19-69485

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SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT HAMILTON

APPROVAL AND VESTING ORDER

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Lawyers for the Receiver, RSM Canada Limited
RCP-E 4C (May 1, 2016)