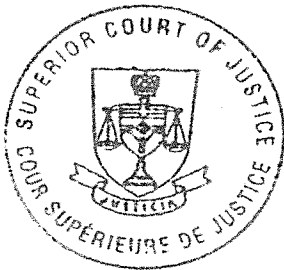


ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) THURSDAY, THE 17TH
)
JUSTICE PENNY) DAY OF OCTOBER, 2019



M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended
and Section 101 of the *Courts of Justice Act*, as amended

AMENDED AND RESTATED APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as receiver (the "**Receiver**") of all of the assets, undertakings and properties of Fingal Properties Holdings Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Lape Holdings Corp. (the "**Purchaser**") dated as of September 3, 2019 and entered into on September 13, 2019 and appended to the Confidential Supplement (the "**Second Confidential Supplement**") to the Fourth Report of the Receiver dated October 10, 2019 (the "**Fourth Report**"), and vesting in Diamond Residential Developments Corp. ("**Diamond**") an Affiliate (as defined in the Sale Agreement) of the Purchaser, pursuant to a direction of the Purchaser to the Receiver, 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 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report, the Second Confidential Supplement and the Confidential Supplement to the Fourth Report dated November 6, 2019 (the "**Third Confidential Supplement**") and on hearing the submissions of counsel for the Receiver and no one appearing for First Source Mortgage Corporation or Moya Financial Credit Union Limited, although properly served as appears from the affidavits of Katie Parent sworn October 10, 2019 and November 6, 2019, filed:

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Fourth Report, the Second Confidential Supplement and the Third Confidential Supplement is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof on any party other than those served, 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 Diamond.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to Diamond substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), the Purchased Assets described in the Sale Agreement, including (i) all of the Debtor's right, title and interest in the Lands described in **Schedule B** hereto (the "**Real Property**"), and (ii) all of the right, title and interest of the Debtor in the other Purchased Assets described in **Schedule C** hereto, shall vest absolutely in Diamond, 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 Dunphy dated September 12, 2018; (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 D hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements, restrictive covenants, defects, regulations, plans, qualifications, interests and instruments listed on **Schedule E**) 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 Elgin (No. 11) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* the Land Registrar is hereby directed to enter Diamond as the owner of 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 D 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 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.

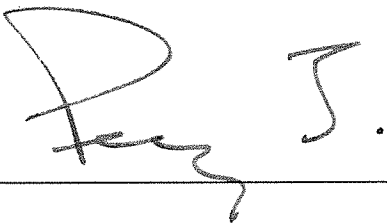
6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (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 Diamond 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 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 / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 07 2019

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-18-598008-00CL

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

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended
and Section 101 of the *Courts of Justice Act*, as amended

RECITALS

A. Pursuant to an Order of the Honourable Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated September 12, 2018, RSM Canada Limited was appointed as the receiver (the "**Receiver**") of all of the assets, undertakings and properties of Fingal Properties Holdings Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof.

B. Pursuant to an Amended and Restated Order of the Court dated October 17, 2019, the Court approved the agreement of purchase and sale dated as of September 3, 2019 and entered into on September 13, 2019 (the "**Sale Agreement**") between the Receiver and Lape Holdings Corp. (the "**Purchaser**") and provided for the vesting in Diamond Residential Developments Corp. ("**Diamond**") an Affiliate (as defined in the Sale Agreement) of the Purchaser, pursuant to a direction of the Purchaser to the Receiver, 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 Diamond of a certificate confirming (i) the payment by the Purchaser or Diamond of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 6 of the Sale Agreement have been satisfied or waived by the Receiver, the

Receiver, the Purchaser and Diamond; 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 or Diamond 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 6 of the Sale Agreement have been satisfied or waived by the Receiver, the Purchaser and Diamond; 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].

RSM CANADA LIMITED,
solely in its capacity as Receiver of all of the
assets, undertakings and properties of Fingal
Properties Holdings Inc. acquired for, or used in
relation to a business carried on by Fingal,
including all proceeds thereof, and not in its
personal capacity

Name: Bryan A. Tannenbaum
Title: President

I have authority to bind the Receiver.

SCHEDULE "B" – REAL PROPERTY

Legal Description

PIN 35156-0440 (LT)

Property Description: PT LT 39 CON NTR SOUTHWOLD PT 2 11R8197; T/W E454421;
SOUTHWOLD

LRO #11

PIN 35156-0458 (LT)

Property Description: PART OF LOT 39 CON NTR SOUTHWOLD DESIGNATED AS PART
1, 11R-8995; SOUTHWOLD

LRO #11

Schedule C – Other Purchased Assets

Books and Records of the Debtor, as defined in the Sale Agreement

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

1. Instrument No. CT104510 being a Charge registered registered on June 20, 2014 from Fingal Properties Holdings Inc. to Krek Slovenian Credit Union Ltd.
2. Instrument No. CT104511 being a Notice of Assignment of Rents General registered on June 20, 2014 from Fingal Properties Holdings Inc. to Krek Slovenian Credit Union Ltd.
3. Instrument No. CT117230 being a Charge registered on August 5, 2015 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Inc.
4. Instrument No. CT117231 being a Postponement registered on August 5, 2015 from Salvatore Guerra to MOS MortgageOne Solutions Ltd.
5. Instrument No. CT118122 being a Notice registered on September 1, 2015 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Inc.
6. Instrument No. CT118764 being a Postponement registered on September 22, 2015 from Krek Slovenian Credit Union Ltd. to Mark Lorne Cosman
7. Instrument No. CT118765 being a Postponement registered on September 22, 2015 from MOS MortgageOne Solutions Ltd. to Mark Lorne Cosman
8. Instrument No. CT118766 being a Postponement registered on September 22, 2015 from Salvatore Guerra to Mark Lorne Cosman
9. Instrument No. CT119717 being a Transfer of Charge registered on October 20, 2015 from MOS MortgageOne Solutions Ltd. to MOS MortgageOne Solutions Ltd. and Community Trust Company
10. Instrument No. CT121755 being a Transfer of Charge registered on December 15, 2015 from to MOS MortgageOne Solutions Ltd. and Community Trust Company to MOS MortgageOne Solutions Ltd. and Community Trust Company
11. Instrument No. CT122930 being an Application of Change of Name registered on January 26, 2016 from Krek Slovenian Credit Union Ltd. to Moya Financial Credit Union Limited
12. Instrument No. CT122970 being a Charge registered on January 28, 2016 from Fingal Properties Holdings Inc. to First Choice Mortgage Corporation
13. Instrument No. CT122971 being a Notice of Assignment of Rents registered on January 28, 2016 from Fingal Properties Holdings Inc. to First Source Mortgage Corporation

14. Instrument No. CT122972 being a Postponement of Instrument Nos. CT104510 to CT122970 registered on January 28, 2016 from Moya Financial Credit Union Limited to First Source Mortgage Corporation
15. Instrument No. CT122973 being a Postponement of Instrument Nos. CT117230 to CT122970 registered on January 28, 2016 from MOS MortgageOne Solutions Ltd. and Community Trust Company to First Source Management Corporation
16. Instrument No. CT123516 being a Transfer of Charge registered on February 12, 2016 from MOS MortgageOne Solutions Ltd. and Community Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
17. Instrument No. CT124693 being a Transfer of Charge registered on March 29, 2016 from MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
18. Instrument No. CT125669 being a Transfer of Charge registered on April 27, 2016 from MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
19. Instrument No. CT126910 being a Notice registered on June 1, 2016 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
20. Instrument No. CT127900 being a Transfer of Charge registered on June 28, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
21. Instrument No. CT128100 being a Transfer of Charge registered on June 30, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
22. Instrument No. CT128995 being a Transfer of Charge registered on July 27, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
23. Instrument No. CT130913 being a Transfer of Charge registered on September 12, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community

Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company

24. Instrument No. CT135509 being a Notice registered on January 13, 2017 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
25. Instrument No. CT135604 being a Transfer of Charge registered on January 17, 2017 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
26. Instrument No. CT142603 being a Construction Lien registered on July 20, 2017 from Domenic's Plumbing Service Inc.
27. Instrument No. CT156378 being a Transfer of Charge registered on July 30, 2018 from MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
28. Instrument No. CT158562 being Application to Register Court Order registered on September 24, 2018 from Ontario Superior Court of Justice (Commercial List) to RSM Canada Limited

**Schedule E – Permitted Encumbrance
related to the Real Property**

(unaffected by the Vesting Order)

General Encumbrances:

1. Any and all reservations, limitations, provisos and conditions expressed in the original the patent from the Crown, as amended by statute, and unpatented mining claims and Native land claims.
2. Any and all applicable laws, including, without limitation, official plans, municipal by-laws, including building and zoning by-laws and decisions of the Committee of Adjustments or any other competent authority permitting variances therefrom, applicable to the Lands.
3. Any and all permits, licenses, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto including, without limitation, registered and unregistered licenses, easements, rights-of-way, rights in the nature of easements for access, public ways, sewers, drains, utilities, gas, steam and water mains or electric light and power, or telephone and telegraphic conduits, poles, wires and cables.
4. Any and all agreements with municipalities including, without limitation, subdivision agreements, development agreements, site plan agreements, servicing agreements and encroachment agreements.
5. Airport zoning regulations.
6. Any and all rail siding agreements, facility agreements, cost sharing agreements, servicing agreements, reciprocal operating agreements and other similar agreements.
7. Any rights of expropriation, access or use or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.
8. Encumbrances for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Lands that have accrued but are not yet due and owing.
9. Restrictive covenants, exclusivity provisions, and other similar land use control agreements.

10. Any statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to the Lands that are claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario or by any other governmental authority under or pursuant to any applicable laws.
11. Any title defects, irregularities or discrepancies in title or possession relating to the Lands that do not have a material adverse effect on the use or marketability of the Lands.
12. Minor encroachments of buildings or structures situate on the Lands onto adjoining lands and minor encroachments of buildings and structures situate on adjoining lands onto the Lands.
13. Security given to a public utility or any municipality or Governmental Authority when required by the operations of the Lands in the ordinary course of business, including without limitation, the right of the municipality to acquire portions of the Lands for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be providing to the Lands.
14. Undetermined or inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands.
15. Any and all unregistered existing offers to lease or sublease, agreements to lease or sublease, leases, subleases or similar agreements to lease, use, occupy or share in possession of the Lands or any part thereof or premises thereon.
16. Any reference plans or plans registered pursuant to the *Boundaries Act* (Ontario).
17. Any and all open and outstanding building permits.
18. Any and all deficiencies, violations, claims, interests, notices, orders or matters of non-compliance or violation in respect of the Lands that are or disclosed in responses received from governmental authorities or other parties having jurisdiction to off-title inquiry investigations or that would be disclosed had such off-title inquiry investigations been conducted.
19. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) and the rights of any person who would, but for the *Land Titles Act* (Ontario), be entitled to the Lands or any part of it through length of adverse possession, prescription, mis-description or boundaries settled by convention and a lease to which Section 70(2) of the *Registry Act* (Ontario) applies.

Specific Encumbrance

20. Instrument No. CT45773 being a notice registered July 22, 2009 between the Corporation of the Township of Southwold and Inpartnr Inc.

M.O.S. MORTGAGEONE SOLUTIONS LTD.

and

FINGAL PROPERTIES HOLDINGS INC.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced TORONTO

AMENDED AND RESTATED
APPROVAL AND VESTING ORDER

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