

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 6th
JUSTICE *NIGHTINGALE*) DAY OF OCTOBER, 2016

BETWEEN:

FIRST SOURCE MORTGAGE CORPORATION

Applicant

- and -

DANG VARIETY STORE AND GAS BAR AND LUCKY RESTAURANT INC.

Respondent

ORDER

THIS MOTION made by Collins Barrow Toronto Limited in its capacity as the court-appointed receiver (the "**Receiver**") of the assets and undertakings of Dang Variety Store and Gas Bar and Lucky Restaurant Inc. (the "**Debtor**"), for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**APS** ") between the Receiver and Aurora Hotel Group, in trust (the "**Purchaser**") dated August 11, 2016, and vesting in the Purchaser all of the Debtor's right, title and interest in and to the Property (as defined in the APS), was heard this day at Kitchener, Ontario.

ON READING the first report of the Receiver dated September 22, 2016 (the "**First Report**"), which attaches thereto the Sale Agreement, and on hearing the submissions of counsel for the Receiver and any other stakeholder attending;

1. THIS COURT ORDERS AND DECLARES that the service of the Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved and the execution by the Receiver of the Sale Agreement and the listing agreement with Region-Wide Real Estate ("Region Wide") made July 11, 2016 (the "**Listing Agreement**") are 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 Property to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that the First Report, and the activities of the Receiver set out therein, are hereby approved.

4. THIS COURT ORDERS AND DECLARES that the Receiver's Statement of Receipts and Disbursements in respect of the Property, as set out in the First Report, is hereby approved.

5. THIS COURT ORDERS AND DECLARES that the fees and disbursements of the Receiver and its counsel to the period ended August 31, 2016 as set out in the fee affidavits attached to the First Report (the "**Fee Affidavits**"), be and are hereby approved.

6. THIS COURT ORDERS that upon the registration in the Land Registry Office of an Application for Vesting Order in the form prescribed by the *Land Titles Act* duly authorized by the Receiver in favour of the Purchaser or such person or persons as the Purchaser may direct and with such Application for

Vesting Order being in furtherance of the Sale Agreement for which court approval is hereby granted (the "**Closing**"), such Application for Vesting Order shall vest title of the Property in the transferee identified in the Application for Vesting Order free and clear of 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:

- (a) any encumbrances or charges created by the Order of the Honourable Justice Sloan dated June 16, 2016;
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system;
- (c) any execution creditor;
- (d) those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "Encumbrances". For greater certainty, the term does not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "C" which shall remain on title);

and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.

7. THIS COURT ORDERS that upon the registration in the Land Registry Office for the appropriate Land Titles Division 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, or a

corporation as the Purchaser may direct, as the owner of the Property identified in Schedule "A" hereto in fee simple, and is hereby directed to delete and expunge from title to the Property all the claims listed in Schedule "B" hereto.

8. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, and that from and after the Closing, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. THIS COURT ORDERS AND DECLARES that the Receiver is authorized and directed to pay from the proceeds of sale of the Property the following:

- (a) to Region-Wide, the real estate commissions contemplated in the Listing Agreement;
- (b) property tax arrears totalling approximately \$77,383;
- (c) arrears to the municipal water supplier in the amount of approximately \$450 and to utilities suppliers for amounts owed for the period June 16, 2016 to the date of closing;
- (d) the fees of the Receiver and counsel to the date of distribution;
- (e) Receiver's Certificates #1 and #2 totalling \$82,000, plus interest thereon; and
- (f) to First Source Mortgage Corporation ("**First Source**"), the balance of the proceeds after payment of the amounts set out in subparagraphs (a) to (e) above less \$50,000;

10. 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 Property 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 settlement, 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.

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

12. 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.

13. THIS COURT ORDERS that Appendices "E" to "F" to the First Report be and are hereby sealed and treated as confidential pending the Closing or further order of the Court.

14. THIS COURT ORDERS that a copy of the within Order may be registered against title to the Property.

Nightingale J.

NIGHTINGALE, J.

ENTERED AT KITCHENER	
in Book No.	8C
As Document No.	1408
on	OCT 06 2016
by	J. Lim-Somerton

SCHEDULE "A"

**LT 36 S/S KING ST & W/S POTTER ST PL 521 CAMBRIDGE; PT LT 35 S/S
KING ST & W/S POTTER ST PL 521 CAMBRIDGE AS IN WS733492; S/T
WS713446; CAMBRIDGE**

PIN: 03776-0074 (LT)

Schedule B – Claims to be deleted and expunged from title to Property

Instrument Type	Instrument No.	Amount	Parties From	Parties To
Charge	WR755770	\$1,430,000	Dang Variety Store and Gas Bar and Lucky Restaurant Inc.	First Source Mortgage Corporation
No Assg. Rent Gen	WR755771		Dang Variety Store and Gas Bar and Lucky Restaurant Inc.	First Source Mortgage Corporation
Charge	WR755772	\$100,000	Dang Variety Store and Gas Bar and Lucky Restaurant Inc.	Red Rock Holdings Inc., Purkis, Christopher
Notice	WR769696		Red Rock Holdings Inc. Chris Purkis	Dang Variety Store and Gas Bar and Lucky Restaurant Inc.
Notice	WR898374		Dang Variety Store and Gas Bar and Lucky Restaurant Inc.	First Source Mortgage Corporation
Transfer	1578982		Lim, Cheng Hong Lao Li - Hsuch	Dang Variety Store and Gas Bar and Lucky Restaurant Inc.

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

Reg. No.	Date	Description
67R3313	June 8, 1989	Plan Reference
WS713446	August 3, 1989	Transfer of Easement
WR166454	October 24, 2005	LR's Order



FIRST SOURCE MORTGAGE CORPORATION

Applicant

vs.

DANG VARIETY STORE AND GAS BAR AND LUCKY RESTAURANT INC..

Respondents

Court File No. C-585-16



ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at
BRAMPTON

APPROVAL AND VESTING ORDER

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in its capacity as Receiver of Dang Variety
Store and Gas Bar and Lucky Restaurant
Inc.