

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

TUESDAY, THE 17TH

JUSTICE NEWBOULD

)

DAY OF DECEMBER, 2013

)

BETWEEN:

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER
STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993
ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. and
2147650 ONTARIO INC.

Applicants

VESTING ORDER

(Lot 25)

THIS APPLICATION, made by the Applicants for, *inter alia*, an order vesting in the Purchasers (as defined herein) the Applicants' right, title and interest in and to the assets (the "**Purchased Assets**") described in the Agreement of Purchase and Sale between Azizulla Hayatullah and Fatana Rahmatullah (the "**Purchasers**") and Silver Streams Homes (Puccini) Inc. (the "**Vendor**") dated January 31, 2012 (the "**Sale Agreement**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Imran Jinnah sworn December 11, 2013 and the Proposed Monitor's Report, and on hearing the submissions of counsel for the Applicants and the Proposed Monitor, counsel for Bank of Montreal, counsel for Foremost Mortgage Corporation, counsel for the private secured lenders, counsel for certain lien claimants, and such

other counsel as are present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Lynn Lee sworn December 12, 2013 filed:

1. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchasers substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), all of the Applicants' 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 Purchasers, 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 Newbould dated December 17, 2013; (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.

2. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of York Region (No. 65) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchasers as the owners 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.

3. **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 Monitor'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.

4. **THIS COURT ORDERS AND DIRECTS** Grant Thornton Limited in its capacity as the “**Monitor**” of the Applicants, to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Vendor and the Purchasers regarding fulfilment of conditions to closing under the Sale Agreement and shall incur no liability with respect to the delivery of the Monitor's Certificate.

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

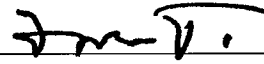
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants;

the vesting of the Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, 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.

7. **THIS COURT ORDERS AND DECLARES** that the transaction contemplated by the Sale Agreement is exempt from the application of the *Bulk Sales Act* (Ontario).

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 Applicants 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 Applicants as may be necessary or desirable to give effect to this Order or to assist the Applicants and their agents in carrying out the terms of this Order.



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



DEC 17 2013

Schedule A – Form of Monitor’s Certificate

Court File No. 13-10362-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**IN THE MATTER OF THE *COMPANIES’ CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER
STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993
ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. and
2147650 ONTARIO INC.**

Applicants

MONITOR’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated December 17, 2013, the restructuring proceedings of the Applicants were commenced under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended and Grant Thornton Limited was appointed as the Monitor (the "**Monitor**").

B. Pursuant to an Order of the Court dated December 17, 2013 (for Lot 25) (the "**Lot 25 Vesting Order**"), the Court provided for the vesting in Axixullah Hayatullah and Fatana Rahmatullah (the "**Purchasers**") all of the Applicants’ right, title and interest in and to the assets described in the agreement of purchase and sale between the Purchasers and the Silver Streams Puccini (Homes) Inc. (the "**Vendor**") dated January 31, 2012 and described in **Schedule “B”** to the Lot 25 Vesting Order (the "**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the purchase price for the Purchased Assets; (ii)

that the conditions to closing have been satisfied or waived by the Vendor and the Purchasers; and (iii) the transaction has been completed to the satisfaction of the Monitor.

C.

THE MONITOR CERTIFIES the following:

1. the Purchasers have paid and the Vendor has received the purchase price for the Purchased Assets;
2. the conditions to closing have been satisfied or waived by the Vendor and the Purchasers; and
3. the transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at [TIME] on _____ [DATE].

**Grant Thornton Limited, in its capacity as
Monitor of the undertaking, property and
assets of the Applicants, and not in its
personal capacity**

Per: _____

Name: Jonathan Krieger

Title: Senior Vice President

Schedule B – Purchased Assets

Lot 25 on Plan 65M4331, Town of Richmond Hill; PIN - 03206-3508 (LT)

Schedule C – LOT 25
Claims to be deleted and expunged from title to Real Property

1. Instrument No. YR1084937, registered on November 9, 2007, is a Transfer/Deed of Land, registered in favour of 2148990 Ontario Inc.
2. Instrument No. YR1273792, registered on January 5, 2009 is a Charge/Mortgage of Land in the principal amount of \$12,387,000 in favour of Bank of Montreal.
3. Instrument No. YR1273793 registered on January 5, 2009 is a Notice/Assignment of Rents in favour of Bank of Montreal.
4. Instrument No. 1315616 registered on May 12, 2009 is a Notice of Agreement Amending Mortgage relating to Instrument No. YR1273792.
5. Instrument No. YR1388186 registered on October 13, 2009 is a Postponement by Bank of Montreal in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1273792 to YR1376244.
6. Instrument No. YR1493832 registered on June 10, 2010 is a Notice of Agreement Amending Mortgage relating to Instrument No. YR1273792.
7. Instrument No. YR1562903 registered on October 18, 2010 is a Charge/Mortgage of Land in the principal amount of \$2,000,000 in favour of 53 Puccini Mortgage Corp.
8. Instrument No. YR1578126 registered on November 22, 2010 is a Postponement by 53 Puccini Mortgage Corp. in favour of Bank of Montreal relating to Instrument Nos. YR1562903 to YR1273792.
9. Instrument No. YR1657652 registered on June 2, 2011 is a Notice of Agreement Amending Mortgage relating to Instrument No. YR1273792.
10. Instrument No. YR1657656 registered on June 2, 2011 is a Charge/Mortgage of Land in the principal amount of \$3,200,000 in favour of Nastell Investments Limited.
11. Instrument No. YR1783162 registered on February 13, 2012 is a Notice of Agreement Amending Mortgage relating to Instrument No. YR1657656.
12. Instrument No. YR1812191 registered on April 23, 2012 is a Postponement by Bank of Montreal in favour of the Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1273792, YR1273793, YR1315616, YR1493832 to YR1811419.
13. Instrument No. YR1812192 registered on April 23, 2012 is a Postponement by 53 Puccini Mortgage Corp in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1562903 and YR1657652 to YR1811419.
14. Instrument No. YR1812193 registered on April 23, 2012 is a Postponement by Nastell Investments Limited in favour of the Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1657656 and YR1783162 to YR1811419.
15. Instrument No. YR2016863, registered on August 9, 2013, is a Construction Lien, in the amount of \$94,837 in favour of Con-Drain Company (1983) Limited.

16. Instrument No. YR2016890, registered on August 9, 2013, is a Notice registered by Con-Drain Company (1983) Limited.
17. Instrument No. YR2043150 registered on October 3, 2013 is a Certificate registered by Con-Drain Company (1983) Ltd. relating to Instrument No. YR2016863.
18. Instrument No. YR2048904, registered on October 18, 2013, is a Construction Lien, in the amount of \$135,060 in favour of Argo Lumber Inc.
19. Instrument No. YR2049079, registered on October 18, 2013, is a Construction Lien, in the amount of \$104,574 in favour of The King-Con Corporation.
20. Instrument No. YR2050277, registered on October 22, 2013, is a Construction Lien, in the amount of \$67,793 in favour of Newmar Window Manufacturing Inc.
21. Instrument No. YR2050961, registered on October 23, 2013, is a Construction Lien, in the amount of \$22,568 in favour of the Trustees of the Labourers' Union of North America Local 183 Members' Benefit Trust Fund.
22. Instrument No. YR2056986, registered on November 6, 2013, is a Construction Lien, in the amount of \$554,354 in favour of Pilbro III Inc.
23. Instrument No. YR2057173, registered on November 6, 2013, is a Construction Lien, in the amount of \$521,675 in favour of Medi Group Incorporated.
24. Instrument No. YR2057568, registered on November 7, 2013, is a Construction Lien, in the amount of \$94,922 in favour of Cardell Flooring Ltd.
25. Instrument No. YR2057675, registered on November 7, 2013, is a Construction Lien, in the amount of \$434,578 in favour of Foremont Drywall Inc., 1382479 Ontario Inc., 1382503 Ontario Inc., 2203579 Ontario Inc.
26. Instrument No. YR2057676, registered on November 7, 2013, is a Construction Lien, in the amount of \$216,202 in favour of Canadian Concrete Forming Limited.
27. Instrument No. YR2057677, registered on November 7, 2013, is a Construction Lien, in the amount of \$227,303 in favour of Pave Plumbing & Heating Inc.
28. Instrument No. YR2058240, registered on November 8, 2013, is a Construction Lien, in the amount of \$328,674 in favour of E. D. Carpenters Limited.
29. Instrument No. YR2058638, registered on November 12, 2013 is a Construction Lien in the amount of \$203,870 in favour of The Sanderson-Harold Company Limited.
30. Instrument No. YR2058688, registered on November 12, 2013, is a Construction Lien, in the amount of \$186,364 in favour of Solo Electric Ltd.
31. Instrument No. YR2059379, registered on November 13, 2013, is a Construction Lien, in the amount of \$91,519 in favour of 1865721 Ontario Inc.
32. Instrument No. YR2060246, registered on November 14, 2013, is a Construction Lien, in the amount of \$108,287 in favour of 669857 Ontario Inc.

33. Instrument No. YR2060384, registered on November 14, 2013, is a Construction Lien, in the amount of \$29,392 in favour of Renova Recycling (2000) Inc.
34. Instrument No. YR2060546, registered on November 15, 2013, is a Certificate registered by 1865721 Ontario Inc., relating to Construction Lien No. YR2059379.
35. Instrument No. YR2060547, registered on November 15, 2013, is a Certificate registered by Medi Group Incorporated, relating to Construction Lien No. YR2057173.
36. Instrument No. YR2060548, registered on November 15, 2013, is a Certificate registered by Cardell Flooring Ltd., relating to Construction Lien No. YR2057568.
37. Instrument No. YR2060549, registered on November 15, 2013, is a Certificate registered by Canadian Concrete Forming Limited., relating to Construction Lien No. YR2057676.
38. Instrument No. YR2060550, registered on November 15, 2013, is a Certificate registered by Foremont Drywall Inc., 1382479 Ontario Inc., 1382503 Ontario Inc., 2203579 Ontario Inc., and C.O.B Foremont Drywall Contracting, relating to Construction Lien No. YR2057675.
39. Instrument No. YR2060551, registered on November 15, 2013, is a Certificate registered by E. D. Carpenters Limited, relating to Construction Lien No. YR2058240.
40. Instrument No. YR2060571, registered on November 15, 2013, is a Certificate registered by Solo Electric Ltd., relating to Construction Lien No. YR2058688.
41. Instrument No. YR2060572, registered on November 15, 2013, is a Certificate registered by Pilbro III Inc., relating to Construction Lien No. YR2056986.
42. Instrument No. YR2060573, registered on November 15, 2013, is a Certificate registered by Pave Plumbing & Heating Inc., relating to Construction Lien No. YR2057677.
43. Instrument No. YR2061882, registered on November 18, 2013, is a Certificate registered by The King-Con Corporation, relating to Construction Lien No. YR2049079.
44. Instrument No. YR2062198, registered on November 19, 2013, is a Construction Lien, in the amount of \$46,559 in favour of GM Exteriors Inc.
45. Instrument No. YR2062199, registered on November 19, 2013, is a Construction Lien, in the amount of \$82,579 in favour of Giancola Aluminum Contractors Inc.
46. Instrument No. YR2067687, registered on November 29, 2013, is a Certificate of Action registered by Argo Lumber Inc., relating to Construction Lien No. YR2048904.
47. Instrument No. YR2067695, registered on November 29, 2013, is a Certificate of Action registered by Newmar Window Manufacturing Inc., relating to Construction Lien No. YR2050277.
48. Instrument No. YR2070295, registered on December 5, 2013, is a Certificate of Action registered by GM Exteriors Inc., relating to Construction Lien No. YR2062198.
49. Instrument No. YR2070296, registered on December 5, 2013, is a Certificate of Action registered by Giancola Aluminum Contractors Inc., relating to Construction Lien No. YR2062199.

50. Instrument No. YR2071421, registered on December 9, 2013, is a Certificate of Action registered by the Trustees of the Labourers' International Union of North America Local 183 Members' Benefit Trust Fund, relating to Construction Lien No. YR2050961.

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

(unaffected by the Vesting Order)

1. Instrument No. YR1376244, registered on September 18, 2009, is a Notice of Subdivision Agreement in favour of The Corporation of The Town of Richmond Hill.
2. Instrument No. YR1811419, registered on April 20, 2012, is a Notice of Subdivision Agreement in favour of The Corporation of The Town of Richmond Hill.
3. 65M-4331, is a Plan of Subdivision registered on July 20, 2012.

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Court File No. 13-10362-00-CL

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

Proceedings commenced at TORONTO

VESTING ORDER (LOT 25)

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