

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

THE HONOURABLE	)	MONDAY, THE 14th
	)	
MR. JUSTICE CAVANAGH	)	DAY OF JUNE, 2021

B E T W E E N:



CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

**TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES
INC.**

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

APPROVAL AND VESTING ORDER

THIS MOTION, made by Grant Thornton Limited in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Trigger Wholesale, Inc. and The En Cadre Group Inc. (collectively, the "**Debtors**") and for certain real property owned by each of Jaimak Real Properties Inc. ("**Jaimak**") or Jaimee Lynn Gdak, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated May 13, 2021 and accepted on May 20, 2021 (the "**Sale Agreement**") between the Receiver and Baka Properties Holdings Ltd. (the "**Purchaser**") for the purchase and sale of a

property located at 652 Colby Drive, Waterloo, Ontario (the "**Purchased Property**") and appended to the fourth report of the Receiver dated June 4, 2021 (the "**Fourth Report**"), and vesting in the Purchaser the Debtors' and Jaimak's right, title and interest in and to the Purchased Property, was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the Fourth Report and on hearing the submissions of counsel for the Receiver, counsel for Clearflow Commercial Finance Corp., counsel for the Purchaser and such other counsel as listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Mariela Adriana Gasparini sworn June 4, 2021 filed:

1. **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 Property to the Purchaser.

2. **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 Debtors' and Jaimak's right, title and interest in and to the Purchased Property 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 13, 2020; (ii) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated October 22, 2020; (iii) 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 (iv) 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 Property are hereby expunged and discharged as against the Purchased Property.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for Land Titles Division of Waterloo (LRO#58) 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 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.

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 Property shall stand in the place and stead of the Purchased Property, 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 Property with the same priority as they had with respect to the Purchased Property immediately prior to the sale, as if the Purchased 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.

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

the vesting of the Purchased Property 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 Jaimak, and shall not be void or voidable by creditors of the Debtors or Jaimak, 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** that the Fourth Report of the Receiver and the activities of the Receiver, as described in the Fourth Report, be and are hereby approved; provided, however that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

8. **THIS COURT ORDERS** that the interim statement of receipts and disbursements as at May 31, 2021, be and is hereby approved.

9. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make a distribution to Canada Revenue Agency in the amount of \$394,582.82.

10. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make a distribution to Clearflow Commercial Finance Corp. in the amount of \$1,000,000.

11. **THIS COURT ORDERS** that Confidential Appendices “1” and “2” to the Fourth Report be and are hereby sealed until the closing of the Transaction.

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.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-20–00649154–00CL

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Madam Justice Gilmore of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 13, 2020, Grant Thornton Limited ("**GTL**") was appointed as the interim receiver of the undertaking, property and assets of Trigger Wholesale, Inc. and The En Cadre Group Inc. (collectively, the "**Debtors**").

B. Pursuant to an Order of the Honourable Mr. Justice McEwen of the Court dated October 22, 2020, GTL was appointed as the receiver (the "**Receiver**") of the undertaking, property and

assets of the Debtors and certain real property owned by each of Jaimak Real Properties Inc. (“**Jaimak**”) or Jaimee Lynn Gdak.

C. Pursuant to an Order of the Court dated June 14, 2021, the Court approved the agreement of purchase and sale dated May 13, 2021 and accepted on May 20, 2021 (the "**Sale Agreement**") between the Receiver and Baka Properties Holdings Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' and Jaimak's right, title and interest in and to the property located at 652 Colby Drive, Waterloo, Ontario (the "**Purchased Property**"), which vesting is to be effective with respect to the Purchased Property 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 Property; (ii) that the conditions to Closing as set out in section 2 of Schedule A of 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 Property payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 2 of Schedule A of 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 _____ [TIME] on _____ [DATE].

**GRANT THORNTON LIMITED, in its
capacity as Receiver of the undertaking,
property and assets of the Debtors and not in
its personal capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Property

1. Real Property

652 Colby Drive, Waterloo, Ontario, legally described as LT 66 PL 1405; CITY OF WATERLOO, being all of PIN 22281-0110 (LT); and

2. Chattels

All chattels situate on the Real Property as of May 13, 2021 which the Receiver has the authority to sell.

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

1. Application to Register a Court Order registered on October 23, 2020 as Instrument Number WR1292381 in favour of ClearFlow Commercial Finance Corp.;
2. Construction Lien registered on November 12, 2020 as Instrument Number WR1297107 by J.B. Construction Inc.;
3. Construction Lien registered on November 30, 2020 as Instrument Number WR1301363 by Ace Lawn Care Inc.;
4. Certificate of Action registered on February 26, 2021 as Instrument Number WR1321471 by Ace Lawn Care Inc.; and
5. Certificate of Action registered on March 4, 2021 as Instrument Number WR1322731 by J.B. Construction Inc.

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

(unaffected by the Vesting Order)

1. Any reservations, restrictions, rights of way, easements or covenants that run with the land, to the extent such reservations, restrictions, rights of way, easements or covenants are preserved by Section 44 of the *Land Titles Act* (Ontario);
2. Any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
3. All laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Real Property;
4. Any minor easements for the supply of utility service to the Real Property or adjacent properties;
5. Encroachments disclosed by any errors or omissions in existing surveys of the Real Property or neighbouring properties, which surveys have been delivered to the Purchaser prior to execution of the Sale Agreement, and any title defect, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Real Property and survey matters generally;
6. The exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
7. The reservations contained in the original grant from the Crown; and
8. APL (General) from Olympia Cabinets K-W Ltd. to 393934 Ontario Ltd. registered as instrument number LT118792 on June 9, 2003.

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Applicant

-and-

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Respondents

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PROCEEDINGS COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

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Lawyers for Grant Thornton Limited, in its capacity as Court-appointed Receiver of Trigger Wholesale, Inc. and The En Cadre Group Inc.