

Court File No. CV-23-00704623-00CL
Estate File No. 31-459671

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) WEDNESDAY, THE 22ND
)
MR. JUSTICE PENNY) DAY OF MAY, 2024
)

B E T W E E N:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

33 HAWARDEN CRESCENT INC. and 35 HAWARDEN CRESCENT INC.

Respondents

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by Pollard & Associates Inc. in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**"), without security, of the undertaking, property and assets of 33 Hawarden Crescent Inc. and 35 Hawarden Crescent Inc. (the "**Debtors**") for an order, *inter alia*, approving the Receiver's conduct and fees, authorizing the Receiver to make distributions and discharging the Receiver was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second and Final Report of the Receiver, dated May 15, 2024, and the appendices thereto (the "**Second Report**"), including the Affidavit of Angela Pollard, sworn May 15, 2024 ("**Pollard Affidavit**") and the Affidavit of Timothy R. Dunn, sworn May 16, 2024

(“**Dunn Affidavit**”), and on hearing the submissions of counsel for the Receiver, and such other counsel as were present and appearing on the Counsel Slip, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Sunita Mohammed, sworn May 16, 2024, filed:

SERVICE

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

APPROVAL OF FEES AND ACTIVITIES

2. **THIS COURT ORDERS** that the Second Report and the activities of the Receiver as set out therein are hereby approved, provided, however, that only the Receiver in its personal capacity and only with respect to its own personal liabilities shall be entitled to rely upon or utilize in any way such approval as it relates to the Receiver.

3. **THIS COURT ORDERS** that the activities of the Receiver’s counsel, Minden Gross LLP (“**Minden Gross**”) and Blaney McMurtry LLP (“**Blaney**”), as set out in the Receiver’s First Report, dated March 1, 2024, the Supplementary Report of the Receiver, dated March 11, 2024, the Second Supplementary Report of the Receiver, dated March 14, 2024, and the Second Report are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, Minden Gross and Blaney, as set out in the Second Report, the Pollard Affidavit and the Dunn Affidavit are hereby approved.

5. **THIS COURT ORDERS** that the proposed accrual of fees of the Receiver in the amount of \$5,000 plus HST are hereby approved.

6. **THIS COURT ORDERS** that the proposed accrual of fees of the Receiver’s counsel in the amount of \$5,000 plus HST are hereby approved.

7. **THIS COURT ORDERS** that the interim statement of receipts and disbursements for the period ending May 15, 2024, and appended as Schedule U to the Second Report, is hereby approved.

8. **THIS COURT ORDERS** that the proforma statement of receipts and disbursements as at May 15, 2024 and appended as Schedule V to the Second Report, is hereby approved.

RECEIVER AUTHORIZED TO MAKE DISTRIBUTIONS

9. **THIS COURT ORDERS** that the Receiver is hereby authorized to distribute the net sale proceeds from the sale of the lands and premises municipally known as 33 Hawarden Crescent, Toronto, Ontario and 35 Hawarden Crescent, Toronto, Ontario (collectively, the “**Real Property**”) to Vector, the first mortgagee on title to the Real Property, in the sum of \$8,246,777.34.

10. **THIS COURT ORDERS** that the Receiver is hereby authorized to distribute any funds it receives following the date of this Order to Vector in satisfaction of the debt owing by the Debtors to Vector.

11. **THIS COURT ORDERS** that the Distributions shall not constitute a “distribution” for the purposes of section 107 of the *Corporations Tax Act (Ontario)*, section 22 of the *Retail Sales Tax Act (Ontario)*, section 117 of the *Taxation Act, 2007 (Ontario)*, section 159 of the *Income Tax Act*, section 270 of the *Excise Tax Act (Canada)*, section 86 of the *Employment Insurance Act (Canada)*, or any other similar applicable federal, provincial or territorial tax legislation (collectively, the “**Tax Statutes**”). The Receiver, in making the Distributions, is merely a disbursing agent and is not exercising any discretion in making the Distributions, and no person is “distributing” such funds for the purpose of the Tax Statutes, and the Receiver shall not incur any liability under the Tax Statutes in respect of the Distributions and the Receiver is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect or as a result of the Distributions made by it in accordance with this Order and any claims of this nature are hereby forever barred.

DISCHARGE OF RECEIVER

12. **THIS COURT ORDERS** that, effective upon the filing of the Receiver of a certificate (the “**Discharge Certificate**”) in the form attached hereto as Schedule “A”, confirming the

completion of the terms and conditions of its discharge have been met, as set out in the Second Report, the Receiver shall be discharged as receiver of all property, assets and undertakings of the Debtors, provided, however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stay of proceedings in favour of Pollard & Associates Inc. in its capacity as Receiver.

13. **THIS COURT ORDERS AND DECLARES** that Pollard & Associates Inc. is hereby released and discharged from any and all liability that Pollard & Associates Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Pollard & Associates Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Pollard & Associates Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

GENERAL

14. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.

15. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction to give effect to this Order and to assist the Debtors, the Receiver and their respective 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 the Debtors, and the Receiver, as an officer of this Court, as may be necessary or desirable to recognize and give effect to this Order and to assist the Debtors, the Receiver and their respective agents in carrying out the terms of this Order.

A handwritten signature in blue ink, appearing to read 'Ray J.', is written over the bottom right portion of the text.

Schedule “A” – Form of Receiver’s Certificate

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B E T W E E N:

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Applicant

- and -

33 HAWARDEN CRESCENT INC. and 35 HAWARDEN CRESCENT INC.

Respondents

RECEIVER’S DISCHARGE CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated October 10, 2023, Pollard & Associates Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of 33 Hawarden Crescent Inc. and 35 Hawarden Crescent Inc (collectively, the “**Debtors**”).

B. Pursuant to an Order of the Court dated May 22, 2024, the Court approved the discharge of the Receiver to become effective upon the filing by the Receiver of a certificate certifying that all outstanding matters in respect of the receivership proceeding have been completed.

THE RECEIVER CERTIFIES the following:

1. All outstanding matters in respect of the receivership proceeding, including but not limited to those set out in the Second and Final Report of the Receiver, dated May 15, 2024, have been completed; and
2. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**POLLARD & ASSOCIATES INC., in its capacity
as the Court-appointed Receiver of 33 Hawarden
Crescent Inc. and 35 Hawarden Crescent Inc.**

Per: _____
Name: Angela K. Pollard
Title: President

VECTOR FINANCIAL SERVICES LIMITED and
Applicant

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33 HAWARDEN CRESCENT INC. et al

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**ONTARIO
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(COMMERCIAL LIST)**

Proceeding commenced at **Toronto**

DISTRIBUTION AND DISCHARGE ORDER

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