


ONTARIO
SUPERIOR COURT OF JUSTICE



IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED, AND SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.. 1990, C. C.30, AS AMENDED

THE HONOURABLE *MR.*)

THURSDAY, THE 26TH

JUSTICE *MINNEMA*)

DAY OF NOVEMBER, 2015

BETWEEN:

HARBOUREDGE MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

HARDEN ENTERPRISES INCORPORATED AND SOUTHWINDS ENTERPRISES LIMITED

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Rosen Goldberg Inc., in its capacity as the Court-appointed Receiver and construction lien trustee (the “**Receiver**”) of the assets, undertakings and properties of Harnden Enterprises Incorporated and Southwinds Enterprises Limited (collectively, the “**Debtors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an

Offer to Purchase (Credit Bid) (the “**Sale Agreement**”) received by the Receiver from HarbourEdge Realty Administration Corporation (the “**Purchaser**”) dated as of the 29th day of September, 2015 and appended as Confidential Appendix 1 to the Second Report of the Receiver dated November 16, 2015 (the “**Second Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at the Kingston Courthouse, 5 Court Street in Kingston, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, *other than Mr. Bortol and Mr. Ryden - Burdodge .c* although properly served as appears from the affidavits of service of Jennifer Samuels, filed:

1. THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record is hereby abridged, if necessary, and validated, such 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 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 the Purchaser.
3. 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’ 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 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 McLean dated March 26, 2015; (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.

4. THIS COURT ORDERS that upon the registration in the Land Titles Division for the Land Registry Office of Frontenac (No. 13) of an Application for Vesting Order in the form prescribed by the *Land Titles 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.

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 Debtors and any bankruptcy order issued pursuant to any such applications; and

- (c) any assignment in bankruptcy made in respect of the Debtors;

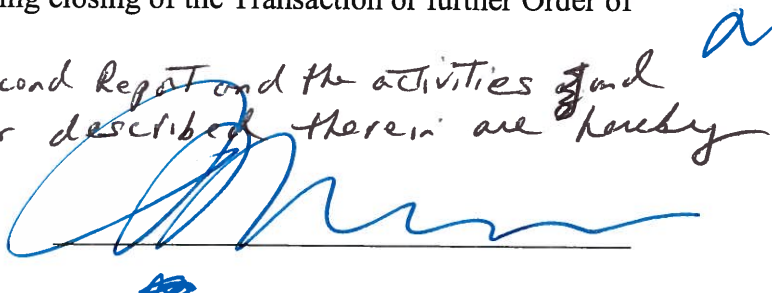
the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, 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 ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. 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.

10. THIS COURT ORDER^s that the Offer to Purchase attached as Confidential Appendix 1 to the Second Report be and is hereby sealed pending closing of the Transaction or further Order of this Court.

11. THIS COURT ORDERS that the Second Report and the activities of and proposed activities of the Receiver described therein are hereby approved.



ENTERED AT KINGSTON
UNSCRIT A KINGSTON

NOV 26 2015

IN BOOK NO. 73-21
AU REGISTRE NO.73-21

Schedule A – Form of Receiver’s Certificate

Court File No. CV-15-68-00

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED, AND SECTION 68 OF THE CONSTRUCTION LIEN ACT, R.S.. 1990, C. C.30, AS AMENDED

B E T W E E N:

HARBOUREDGE MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

HARNDEN ENTERPRISES INCORPORATED AND SOUTHWINDS ENTERPRISES LIMITED

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McLean of the Ontario Superior Court of Justice (the “**Court**”) dated March 26, 2015, Rosen Goldberg Inc. was appointed as the receiver and construction lien trustee (the “**Receiver**”) of the undertaking, property and assets of Harnden Enterprises Incorporated and Southwinds Enterprises Limited (collectively, the “**Debtors**”).

B. Pursuant to an Order of the Court dated November 26, 2015, the Court approved the agreement Offer to Purchase dated as of the 29th day of September, 2015 (the “**Sale Agreement**”) between the Receiver and HarbourEdge Realty Administration Corporation (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ 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 the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the

conditions to Closing as set out in sections 18, and 19 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 Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 18, and 19 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 _____ on _____, 2015.

**ROSEN GOLDBERG INC., in its capacity as
Court-Appointed Receiver and Construction
Lien Trustee of the assets, undertakings and
properties of Harnden Enterprises
Incorporated and Southwinds Enterprises
Limited, and not in its personal or corporate
capacity**

Per: _____

Name: Brahm Rosen

Title: President

Schedule B – Purchased Assets**PIN 36128-0128 (LT)**

PT LT 5 CON 4 WESTERN ADDITION KINGSTON PT 2 13R19417; S/T FR782059;
KINGSTON

Being all of PIN 36128-0128 (LT)

Land Titles Division for the Land Registry Office of Frontenac (No. 13)

PIN 36265-0030 (LT)

PT LT 4 CON 4 WESTERN ADDITION KINGSTON AS IN FR643223; KINGSTON

Being all of PIN 36265-0030 (LT)

Land Titles Division for the Land Registry Office of Frontenac (No. 13)

PIN 36265-0026 (LT)

PT LT 5-6 CON 4 WESTERN ADDITION KINGSTON AS IN FR603823 LYING S OF
GENGE RD EXCEPT FR134909 & RP 703; S/T FR108077, FR228153; KINGSTON

Being all of PIN 36265-0026 (LT)

Land Titles Division for the Land Registry Office of Frontenac (No. 13)

PIN 36265-0033 (LT)

PT LT 4 CON 4 WESTERN ADDITION KINGSTON PT 1, 13R13124; KINGSTON;
SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 13R20411 IN FAVOUR OF
HYDRO ONE NETWORKS INC. AS IN FC148565

Being all of PIN 36265-0033 (LT)

Land Titles Division for the Land Registry Office of Frontenac (No. 13)

PERSONAL PROPERTY OF HARNDEN ENTERPRISES INCORPORATED

Miscellaneous golf apparel, golf gear and golf playing equipment remaining in inventory on Closing.

Miscellaneous fertilizer, pesticide, office equipment, dining and restaurant equipment.

COURSE EQUIPMENT
1 set of Verticutter Heads
1 skid roofing tiles
1000 gal oil drums
3 Point Hitch Box Leveller
4 Wheeled car trailer
Ball Washers
Aluminum Soffet Facia Bender
Champion 4000 Generator
Cheap Chainsaw
Cushman Pumptruck Automatic
Cushman Top Dresser
Cushman Turf Truckster Dump
Cushman utility vehicle box
EZ Go ST Sport II Power Cart
Flotec Trash Pump
Ford F100 1 Ton Truck
Frontier Pull Behind Batwing cutter
Greens Groomer Pull Behind brushes
Husky 2 Gal compressor
Irrigation Hoses with sprinklers
Irrigation Hose Reel Portable
Jacobsen Verticutter heads
Lifetime Utility Trailer
Lincoln Arc Welder
MasterCraft Tool box with Assorted Tools
New Windows
Polesaw with 12ft extension (Gas)
Prizelawn Fertilizer Spreader

Pull behind sprayer
Ransoms Rotary Rough Mower
Ryan GA30 Aerator
Ryan sod cutter
Smithco Spraystar 1600P Sprayer
Smithco Superrake Bunker Trike
Split V Truck Plow
Stand up 30 Gal Compressor
Stihl Backpack Blower (Magnum)
Stihl Chainsaw
Stihl Line Trimmer
Therrien 3HP Debris Blower
Tournamaster Sprayer
Wallenstien PTO Log Splitter

PERSONAL PROPERTY OF SOUTHWINDS ENTERPRISES LIMITED

Description
Acer Desktop Computers Model ASPIRE Z3-605
Avanti Competition Series Goal Nets
Avanti Channel Series Goal Nets
Ball Retriever
Blue Ladder
Cash Drawers
Chairs
Cleaning Supplies
Club Car Golf Cart Model CA300 SN A5CUBB2ALEA507848
Coffee Machine
Dandby Stand up Freezer
Desks
Fibrillator
Fire Extinguisher
First Aid Stretcher
Givova Guards
Givova Jackets
Givova Socks
Golf balls
Golf Mats
Golf Trays
Harris Time Clock Model ACTIVM3 SN 8727
Hisense TV Model 1080P 55"
Hot Dog Machine
John Deere 2 Wheel Trailer - SN TC022BXHBT055267
Lobby Furniture - set of leather chairs and couches
Locker- 1x1 ft
Magnets set
Manikans
Microwave
Mirror in lobby

Miscellaneous small tools
Printers
Refrigerator
Samsung Laptop Model 915S
Shag Bags
Miscellaneous sporting gear
Stands
Support Equipment
Tables
Team Benches
Terra Groomer Model D89192
TOA Amps Model DA-500F-HL
TOA Crossover
TOA Speakers Model SRS4S
Vtec Cordless Phones
Wittek Ball Machine

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

REGISTRATIONS TO BE DELETED FROM PIN 36128-0128 (LT)

1. Instrument No. FR782062 registered 2010/03/30 – Transfer from the Minister of Transportation (Ontario) in favour of Harnden Enterprises Incorporated
2. Instrument No. FC159224 registered 2013/05/24 – Charge from Harnden Enterprises Incorporated, Kenneth Andrew Harnden, and Southwinds Enterprises Limited in favour of 1880452 Ontario Ltd.
3. Instrument No. FC162615 registered 2013/07/12 – Application to Change Name from 1880452 Ontario Ltd. to 1709927 Ontario Limited
4. Instrument No. FC163715 registered 2013/07/26 – Charge from Harnden Enterprises Incorporated and Southwinds Enterprises Limited in favour of Harbouredge Mortgage Investment Corporation
5. Instrument No. FC163725 registered 2013/07/29 – Postponement from 1709927 Ontario Limited in favour of Harbouredge Mortgage Investment Corporation
6. Instrument No. FC171429 registered 2013/11/26 – Notice from Harnden Enterprises Incorporated and Southwinds Enterprises Limited to Harbouredge Mortgage Investment Corporation
7. Instrument No. FC171431 registered 2013/11/26 – Postponement from 1709927 Ontario Limited in favour of Harbouredge Mortgage Investment Corporation
8. Instrument No. FC196799 registered 2015/04/01 – Application to Register a Court Order

REGISTRATIONS TO BE DELETED FROM PIN 36265-0030(LT)

1. Instrument No. FC117133 registered 2011/07/12 – Transfer from CEC Fire Inc. in favour of Harnden Enterprises Incorporated
2. Instrument No. FC159224 registered 2013/05/24 – Charge from Harnden Enterprises Incorporated, Kenneth Andrew Harnden, and Southwinds Enterprises Limited in favour of 1880452 Ontario Ltd.
3. Instrument No. FC162615 registered 2013/07/12 – Application to Change Name from 1880452 Ontario Ltd. to 1709927 Ontario Limited
4. Instrument No. FC163715 registered 2013/07/26 – Charge from Harnden Enterprises Incorporated and Southwinds Enterprises Limited in favour of Harbouredge Mortgage Investment Corporation

5. Instrument No. FC163725 registered 2013/07/29 – Postponement from 1709927 Ontario Limited in favour of Harbouredge Mortgage Investment Corporation
6. Instrument No. FC171429 registered 2013/11/26 – Notice from Harnden Enterprises Incorporated and Southwinds Enterprises Limited to Harbouredge Mortgage Investment Corporation
7. Instrument No. FC171431 registered 2013/11/26 – Postponement from 1709927 Ontario Limited in favour of Harbouredge Mortgage Investment Corporation
8. Instrument No. FC199498 registered 2015/05/27 – Application to Register Court Order

REGISTRATIONS TO BE DELETED FROM PIN 36265-0026 (LT)

1. Instrument No. FR603823 registered 1993/09/17 – Transfer in favour of Harnden Enterprises Incorporated
2. Instrument No. FC159224 registered 2013/05/24 – Charge from Harnden Enterprises Incorporated, Kenneth Andrew Harnden, and Southwinds Enterprises Limited in favour of 1880452 Ontario Ltd.
3. Instrument No. FC162615 registered 2013/07/12 – Application to Change Name from 1880452 Ontario Ltd. to 1709927 Ontario Limited
4. Instrument No. FC163715 registered 2013/07/26 – Charge from Harnden Enterprises Incorporated and Southwinds Enterprises Limited in favour of Harbouredge Mortgage Investment Corporation
5. Instrument No. FC163725 registered 2013/07/29 – Postponement from 1709927 Ontario Limited in favour of Harbouredge Mortgage Investment Corporation
6. Instrument No. FC171429 registered 2013/11/26 – Notice from Harnden Enterprises Incorporated and Southwinds Enterprises Limited to Harbouredge Mortgage Investment Corporation
7. Instrument No. FC171431 registered 2013/11/26 – Postponement from 1709927 Ontario Limited in favour of Harbouredge Mortgage Investment Corporation
8. Instrument No. FC199498 registered 2015/05/27 – Application to Register Court Order

REGISTRATIONS TO BE DELETED FROM PIN 36265-0033 (LT)

1. Instrument No. FR679308 registered 1998/05/29 – Transfer from Cecil Franklin Harnden in favour of Southwinds Enterprises Limited
2. Instrument No. FC159224 registered 2013/05/24 – Charge from Harnden Enterprises Incorporated, Kenneth Andrew Harnden, and Southwinds Enterprises Limited in favour of 1880452 Ontario Ltd.
3. Instrument No. FC159228 registered 2013/05/24 – Application from Morven Construction Ltd. in favour of 1880452 Ontario Ltd.
4. Instrument No. FC162615 registered 2013/07/12 – Application to Change Name from 1880452 Ontario Ltd. to 1709927 Ontario Limited
5. Instrument No. FC163715 registered 2013/07/26 – Charge from Harnden Enterprises Incorporated and Southwinds Enterprises Limited in favour of Harbouredge Mortgage Investment Corporation
6. Instrument No. FC163725 registered 2013/07/29 – Postponement from 1709927 Ontario Limited in favour of Harbouredge Mortgage Investment Corporation
7. Instrument No. FC171429 registered 2013/11/26 – Notice from Harnden Enterprises Incorporated and Southwinds Enterprises Limited to Harbouredge Mortgage Investment Corporation
8. Instrument No. FC171431 registered 2013/11/26 – Postponement from 1709927 Ontario Limited in favour of Harbouredge Mortgage Investment Corporation
9. Instrument No. FC186853 registered 2014/09/12 – Construction lien in favour of Alex McCoy Plumbing & Heating Ltd.
10. Instrument No. FC187265 registered 2014/09/19 – Construction lien in favour of Wylie Electric o/a 1425786 Ontario Inc.
11. Instrument No. FC189151 registered 2014/10/23 – Certificate of Action regarding Claim for Lien, Instrument No. FC186853
12. Instrument No. FC192392 registered 2014/12/17 – Construction lien in favour of Mendes, Antonio carrying on business as Antonio Mendes Construction
13. Instrument No. FC194268 registered 2015/01/30 – Certificate of Action regarding Claim for Lien, Instrument No. FC192392
14. Instrument No. FC196799 registered 2015/04/01 – Application to Register Court Order

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

(unaffected by the Vesting Order)

REGISTRATIONS TO BE PERMITTED ON PIN 36128-0128 (LT)

1. Instrument No. 13R19417 registered 2008/12/01 – Plan Reference
2. Instrument No. FR781605 registered 2010/03/04 – Plan Correction
3. Instrument No. FR782059 registered 2010/03/30 – Transfer Easement from the Minister of Transportation (Ontario) in favour of Bell Canada

REGISTRATIONS TO BE PERMITTED ON PIN 36265-0030 (LT)

No registrations to be permitted on PIN 36265-0030 (LT)

REGISTRATIONS TO BE PERMITTED ON PIN 36265-0026 (LT)

1. Instrument No. FR108077 registered 1959/02/11 – Transfer Easement in favour of The Hydro–Electric Power Commission Of Ontario
2. Instrument No. 13R330 registered 1971/12/22 – Plan Reference
3. Instrument No. FR228153 registered 1972/09/19 – Transfer Easement in favour of The Hydro–Electric Power Commission Of Ontario

REGISTRATIONS TO BE PERMITTED ON PIN 36265-0033 (LT)

1. Instrument No. 13R13124 registered 1996/02/09 – Plan Reference
2. Instrument No. FR677830 registered 1998/03/25 – Site Plan Agreement in favour of The Corporation of the City of Kingston
3. Instrument No. 13R20411 registered 2012/05/22 – Plan Reference
4. Instrument No. FC148565 registered 2012/10/24 – Transfer Easement
5. Instrument No. FC158172 registered 2013/05/03 – Notice from The Corporation of the City of Kingston to Southwinds Enterprises Limited

6. Instrument No. FC178992 registered 2014/05/12 – Notice from The Corporation of the City of Kingston to Southwinds Enterprises Limited Amending the Site Plan Agreement

HARBOUR EDGE MORTGAGE INVESTMENT CORPORATION
Applicant

-and- **HARDEN ENTERPRISES INCORPORATED et al**
Respondent

Court File No. CV-15-68-00

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
KINGSTON

APPROVAL AND VESTING ORDER

DICKINSON WRIGHT LLP

Barristers & Solicitors
199 Bay Street
Suite 2200, P. O. Box 447
Toronto, Ontario, M5L 1G4
FAX: (416) 865-1398

DAVID PREGGER (36870L)

Email: dpreger@dickinsonwright.com
Tel: (416) 366-6406

LISA S. CORNE (27974M)

Email: lcorne@dickinsonwright.com
Tel: (416) 646-4608

Lawyers for the Receiver, Rosen Goldberg Inc.