



Electronically issued : 25-May-2022
Délivré par voie électronique
Toronto

Court File No. CV-21-00664273-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM)
JUSTICE GILMORE)
TUESDAY, THE 24th
DAY OF MAY, 2022

B E T W E E N:

AMERICAN GENERAL LIFE INSURANCE COMPANY,
LEXINGTON INSURANCE COMPANY, AND
THE VARIABLE ANNUITY LIFE INSURANCE COMPANY

Applicants

- and -

SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658
ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH
HOLDINGS INC., 100 COLBORNE HOLDINGS INC., 240 OLD
PENETANGUISH HOLDINGS INC., GROSS PROPERTIES INC., 180 VINE
PURCHASER INC., AND 2413667 ONTARIO INC.

Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,
c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**APPROVAL AND VESTING ORDER
65 Larch Street, Sudbury, Ontario**

THIS MOTION, made by KPMG Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “B”** hereto (the “**Real Property**”) of (i) 65 Larch Holdings Inc. (the “**Legal Owner**”) acquired for, or used in

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relation to the Legal Owner's business, (collectively, the "**Legal Owner's Property**"), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "**Beneficial Owners**"), and together with the Legal Owner, the "**Debtors**"), but solely in respect of all of each Beneficial Owner's right, title and interest in and to the Legal Owner's Property, including the Real Property, and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtors (acting by the Receiver) and 1000151410 Ontario Limited (the "**Purchaser**") dated April 21, 2022 and appended to the Second Report of the Receiver dated May 13, 2022 (the "**Second Report**"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets set out in **Schedule "C"** hereof (the "**Purchased Assets**"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver's Notice of Motion, the Second Report and the appendices thereto, the Supplement to the Second Report of the Receiver dated May 20, 2022 and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, the Purchaser and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver's Motion Record as appears from the affidavit of Nancy Thompson sworn May 17, 2022 (the "**Thompson Affidavit**"):

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.
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,

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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 **Schedule "C"**, including without limitation the Real Property, 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 Mr. Justice Dunphy dated June 29, 2021; (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 "D"** 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 "E"**) 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 Registry Office for the Land Titles Division of Sudbury (No. 53) of an Application for Vesting Order in the form

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prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter 1000151410 Ontario Limited as the owner of 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 “D”** 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, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all Personal Information in the Books and Records (each as defined in the Sale Agreement) of the Debtors. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

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

(a) the pendency of these proceedings;

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

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 any Debtor and shall not be void or voidable by creditors of such Debtor, 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.

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.



SCHEDULE A

Form of Receiver's Certificate

Court File No. CV-21-00664273-00CL

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of Mr. Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as the receiver and manager (the "**Receiver**") without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in Schedule "A" to the Appointment Order (collectively with the leases related thereto, the "**Real**

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Property”) of, among other parties, (i) 65 Larch Holdings Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”), and (ii) Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others.

B. Pursuant to an Order of the Court dated May 24, 2022, the Court approved the agreement of purchase and sale made as of April 21, 2022 (the “**Sale Agreement**”) between the Debtors (acting by the Receiver) and 1000151410 Ontario Limited (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 7.2 and 7.3 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 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

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3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KPMG Inc., 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

Real Property

65 Larch Street, Sudbury

PIN 73584-0077(LT): LT 23 BLK A PL 3SA MCKIM; GREATER SUDBURY

PIN 73584-0078(LT): LT 20-22 BLK A PL 3SA MCKIM; GREATER SUDBURY

PIN 73584-0097(LT): PT N1/2 LT 5 CON 3 MCKIM AS IN S81426 (SECONDLY & THIRDLY); GREATER SUDBURY

SCHEDULE C

Purchased Assets

- i. The Assigned Contracts;
- ii. Any Personal Property or fixtures that are Related to the Business and located upon the Real Property Assets;
- iii. All Real Property Assets;
- iv. The Receivables of each of the Vendors which are derived from the Real Property Assets and are Related to the Business and become due from and after the Closing Time;
- v. The Permits and Licences;
- vi. The Books and Records that are Related to the Business;
- vii. All goodwill Related to the Business; and
- viii. All proceeds of any or all of the foregoing received or receivable after the Closing Time.

Capitalized terms used in this Schedule shall have the meanings given to them in the Sale Agreement.

SCHEDULE D

Claims to be deleted and expunged from title to Real Property

PIN 73584-0077(LT):

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SD309725	January 26, 2016	Charge	\$70,000,000	65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309726	January 26, 2016	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD352590	March 2, 2018	Charge	\$1,600,000	65 Larch Holdings Inc.	Gross Capital Inc.
SD379370	July 19, 2019	Charge	\$6,250,000	65 Larch Holdings Inc.	1592106 Ontario Inc.
SD379371	July 19, 2019	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	1592106 Ontario Inc.
SD379375	July 19, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.

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SD381950	August 29, 2019	Notice	\$2	65 Larch Holdings Inc.	1592106 Ontario Inc.
SD381951	August 29, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD425022	June 28, 2021	Construction Lien	\$160,252	Enersavings Inc.	
SD433191	September 30, 2021	Certificate		Enersavings Inc.	

PIN 73584-0078(LT):

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SD309725	January 26, 2016	Charge	\$70,000,000	65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309726	January 26, 2016	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD352590	March 2, 2018	Charge	\$1,600,000	65 Larch Holdings Inc.	Gross Capital Inc.
SD379370	July 19, 2019	Charge	\$6,250,000	65 Larch Holdings Inc.	1592106 Ontario Inc.

SD379371	July 19, 2019	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	1592106 Ontario Inc.
SD379375	July 19, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD381950	August 29, 2019	Notice	\$2	65 Larch Holdings Inc.	1592106 Ontario Inc.
SD381951	August 29, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD425022	June 28, 2021	Construction Lien	\$160,252	Enersavings Inc.	
SD433191	September 30, 2021	Certificate		Enersavings Inc.	

PIN 73584-0097(LT):

Instrument No.	Date	Instrument Type	Amount	Parties From	Parties To
SD309725	January 26, 2016	Charge	\$70,000,000	65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and Lexington Insurance Company
SD309726	January 26, 2016	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	American General Life Insurance Company, The Variable Annuity Life Insurance Company, and

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					Lexington Insurance Company
SD352590	March 2, 2018	Charge	\$1,600,000	65 Larch Holdings Inc.	Gross Capital Inc.
SD379370	July 19, 2019	Charge	\$6,250,000	65 Larch Holdings Inc.	1592106 Ontario Inc.
SD379371	July 19, 2019	Notice of Assignment of Rents-General		65 Larch Holdings Inc.	1592106 Ontario Inc.
SD379375	July 19, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.
SD381950	August 29, 2019	Notice	\$2	65 Larch Holdings Inc.	1592106 Ontario Inc.
SD381951	August 29, 2019	Postponement		Gross Capital Inc.	1592106 Ontario Inc.

SCHEDULE E

Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

(Unaffected by the Vesting Order)

Capitalized terms used in this Schedule shall have the meanings given to them in the Sale Agreement

- (a) Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested;
- (b) construction, mechanics', carriers', workers', repairers', storers' or other similar Encumbrances (inchoate or otherwise) if individually or in the aggregate: (i) they are not material; (ii) they arose or were incurred in the ordinary course of business; (iii) they have not been filed, recorded or registered in accordance with Applicable Law; (iv) notice of them has not been given to the Vendors; and (v) the indebtedness secured by them is not in arrears;
- (c) title defects or irregularities, unregistered easements or rights of way, and other unregistered restrictions or discrepancies affecting the use of real property if such title defects, irregularities or restrictions would be disclosed by an up-to-date survey of such real property or, if not, are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (d) easements, covenants, rights of way and other restrictions if registered provided that they are complied with in all material respects and do not, in the aggregate, materially adversely affect the operation of the Business or the continued use of the real property to which they relate after the Closing on substantially the same basis as the Business is currently being operated and such real property is currently being used;
- (e) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance;
- (f) registered easements on real property for the supply of utilities or telephone services and for drainage, storm or sanitary sewers, public utilities lines, telephone lines, cable television lines or other services, provided such easements have been complied with in all material respects;
- (g) registered easements or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Real Property Assets, provided such easements or rights-of-way have been complied with in all material respects;
- (h) facility cost sharing, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or any Governmental Authority in respect of the Real Property Assets, provided such agreements have been complied with in all material respects;

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- (i) any minor encroachments by any structure located on the Real Property Assets onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Real Property Assets;
- (j) all encumbrances and instruments registered against title to the Real Property Assets and the property that is the subject of the Real Property Leases; and
- (k) in respect of the Real Property Assets and the Real Property Leases, the provisions of any Applicable Law, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning, and any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent.

Court File No.: CV-21-00664273-00CL

AMERICAN GENERAL LIFE INSURANCE COMPANY, *et al.*
Applicants

- and -

SOUTHMOUNT HEALTHCARE CENTRE INC., *et al.*
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding Commenced at Toronto

APPROVAL AND VESTING ORDER
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