

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR.

)

FRIDAY, THE 7<sup>TH</sup>

)

JUSTICE MORAWETZ

)

DAY OF OCTOBER, 2011

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

BODKIN FINANCIAL CORPORATION, BODKIN LEASING CORPORATION  
and BODKIN CAPITAL CORPORATION

Respondents

APPLICATION UNDER SUBSECTION 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

ORDER

**THIS MOTION**, made by PricewaterhouseCoopers Inc. ("PWCI"), in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of the undertaking, property and assets of Bodkin Financial Corporation, Bodkin Leasing Corporation and Bodkin Capital Corporation (collectively, the "**Debtors**") for an order, *inter alia*:


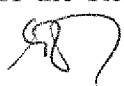
- (a) approving the Report of the Proposed Receiver of the Debtors dated October 3, 2011 (the "**Report**") and the Supplementary Report to the First Report of the Proposed Receiver of the Debtors dated October 7, 2011 (the "**Supplementary Report**"), filed, and the activities of the Receiver described therein;

- (b) approving the Administration Agreement (the “**Administration Agreement**”) among the Receiver, Sun Life Assurance Company of Canada (“**Sun Life**”) and Bennington Lease Administration Corp. (“**BLAC**”), a redacted copy of the form of which is appended to the Report and an unredacted copy of the form of which is appended to the Supplementary Report;
- (c) approving the Reserve Sharing Agreement between the Receiver and BLAC (the “**Reserve Sharing Agreement**”), a redacted copy of the form of which is appended to the Report and an unredacted copy of the form of which is appended to the Supplementary Report;
- (d) approving the Transition Agreement between the Receiver and 7762895 Canada Inc. (“**776**”) (the “**Transition Agreement**”), a copy of the form of which is appended to the Report;
- (e) approving the Reimbursement Agreement between the Receiver and Bank of Montreal (“**BMO**”) (the “**Reimbursement Agreement**”), a copy of the form of which is appended to the Report;
- (f) approving the Amended and Restated Master Reserve Fund Agreement among the Receiver, BLAC, Sun Life and Sun Life Financial Trust Inc. (the “**Reserve Fund Agreement**”), a copy of the form of which is appended to the Report;
- (g) sealing the Supplementary Report until further Order of this Court;
- (h) authorizing the Receiver to create reserves from the proceeds of the estate of the Debtors in respect of: (i) the Receiver’s Charge, as that term is defined in the Order of this Court dated the date hereof appointing the Receiver (the “**Receivership Order**”); and (ii) potential priority claims to be paid by the Receiver (collectively, the “**Reserves**”); and
- (i) authorizing and directing the Receiver, subject to the Reserves, to distribute proceeds of the estate of the Debtors to Bank of Montreal (“**BMO**”) up to the amount of the Debtors’ indebtedness to BMO,

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report and the appendices thereto and the Supplementary Report and the appendices thereto, and upon hearing the submissions of counsel for the Receiver, counsel for the Debtors, counsel for Sun Life, counsel for 776 and BLAC and counsel for BMO, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Susy Moniz sworn October 3, 2011, filed:

1. **THIS COURT ORDERS** that the time for service and filing 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.

2.  ~~**THIS COURT ORDERS** that the Report and the Supplementary Report and the activities of the Receiver, as set out in the Report and the Supplementary Report, are hereby approved.~~ 

3. **THIS COURT ORDERS AND DECLARES** that the execution of the Administration Agreement in substantially the form appended to the Report by the Receiver is hereby authorized and approved, and 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 matters contemplated in the Administration Agreement.

4. **THIS COURT ORDERS AND DECLARES** that the execution of the Reserve Sharing Agreement in substantially the form appended to the Report by the Receiver is hereby authorized and approved, and 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 matters contemplated in the Reserve Sharing Agreement.

5. **THIS COURT ORDERS AND DECLARES** that the execution of the Transition Agreement in substantially the form appended to the Report by the Receiver is hereby authorized and approved, and 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 matters contemplated in the Transition Agreement.

6. **THIS COURT ORDERS AND DECLARES** that the execution of the Reimbursement Agreement in substantially the form appended to the Report by the Receiver is hereby authorized and approved, and 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 matters contemplated in the Reimbursement Agreement.

7. **THIS COURT ORDERS AND DECLARES** that the execution of the Reserve Fund Agreement in substantially the form appended to the Report by the Receiver is hereby authorized and approved, and 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 matters contemplated in the Reserve Fund Agreement.

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

the rights of Sun Life and BLAC pursuant to the Administration Agreement, the Reserve Fund Agreement and the Reserve Sharing Agreement and to the proceeds paid by Sun Life into the Reserve Fund (as such term is defined in the Administration Agreement) shall all be binding on any trustee in bankruptcy appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall they 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 they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS** that the Supplementary Report be sealed and protected until further Order of this Court.

10. ~~THIS COURT ORDERS AND DECLARES~~ that any interest or right that BLAC may have at any time and from time to time in and to any monies standing to the credit of each of the Reserve, the Holding Account, the Segregated Bank Account and the Servicer Advance Reserve Account, as each such term is defined in the Reserve Sharing Agreement (collectively, the "**Funds**"), pursuant to the terms of the Administration Agreement, the Reserve Fund Agreement and the Reserve Sharing Agreement and any right that BLAC may have to receive any of the Funds in accordance with the terms of the Administration Agreement, the Reserve Fund Agreement and the Reserve Sharing Agreement shall be free and clear of and from any and all Encumbrances (as defined in the Approval and Vesting Order made in these proceedings relating to the sale of assets to 776 and BLAC) arising under or in connection with these proceedings or asserted by any of the Debtors, any creditor of any of the Debtors or the Receiver, and that all such Encumbrances, if any, which would otherwise encumber or affect, in any manner or to any degree, any such interest of BLAC in and to the Funds or any such right to receive the same are hereby expunged and discharged as against any such interest and any such right. Any interest or right that BLAC may have at any time and from time to time in and to any monies standing to the credit of each of the Reserve, the Segregated Bank Account and the Servicer Advance Reserve Account shall be subject to any interest or right that Sun Life may have at any time and from time to time in and to any monies standing to the credit of each of the Reserve, the Segregated Bank Account and the Servicer Advance Reserve Account pursuant to the Administration Agreement and the Reserve Fund Agreement.

11. ~~THIS COURT ORDERS AND DECLARES~~ that any interest or right that BMO may have at any time and from time to time in and to any right of the Debtors or any of them or of the Receiver in and to any monies standing to the credit of each of the Reserve, the Holding Account, the Segregated Bank Account and the Servicer Advance Reserve Account, and in and to any right of the Debtors or any of them or of the Receiver to receive any of the Funds in accordance with the terms of the Administration Agreement, the Reserve Fund Agreement and the Reserve Sharing Agreement, pursuant to the Encumbrances (as defined in the Approval and Vesting Order made in these proceedings relating to the sale of assets to 776 and BLAC) held by BMO on the date hereof shall not be affected in any manner or to any degree by the terms of the Administration Agreement, the Reserve Fund Agreement or the Reserve Sharing Agreement or by any actions taken thereunder or in connection therewith, nor shall any such Encumbrance held

by BMO in or upon any such right of the Debtors or any of them or the Receiver in and to any of the Funds or any such right of the Debtors or any of them or the Receiver to receive any of the Funds in accordance with the terms of the Administration Agreement, the Reserve Fund Agreement and the Reserve Sharing Agreement be expunged or discharged by the Approval and Vesting Order made in these proceedings relating to the sale of assets to 776 and BLAC or the Approval and Vesting Order made in these proceedings relating to the sale of assets to Sun Life. Any interest or right that BMO may have at any time and from time to time in and to any right of the Debtors or any of them or of the Receiver in and to any monies standing to the credit of each of the Reserve, the Segregated Bank Account and the Servicer Advance Reserve Account shall be subject to any interest or right that Sun Life may have at any time and from time to time in and to any monies standing to the credit of each of the Reserve, the Segregated Bank Account and the Servicer Advance Reserve Account pursuant to the Administration Agreement and the Reserve Fund Agreement.

12. **THIS COURT ORDERS** that the Receiver shall make the following payments and the same be and are hereby approved:

- (a) a reserve in the amount of \$2,600,000 to be held by the Receiver in respect of the Receiver's Charge and priority claims to be paid by the Receiver; and
- (b) distributions to BMO up to the amount of the Debtors' indebtedness to BMO.

13. **THIS COURT ORDERS** that upon filing of the articles of amendment changing the names of each of the Debtors in accordance with paragraphs 6 and 7 of the Approval and Vesting Order made in these proceedings relating to the sale of assets to 776 and BLAC and the Receiver filing with this Court a written confirmation that such name changes have been effected:

- (a) the title of these proceedings shall be and is hereby changed to the following:

BETWEEN:

**BANK OF MONTREAL**

Applicant

- and -

**1682322 ONTARIO INC., 326551 CANADA INC., AND  
3267911 CANADA INC.**

Respondents

**APPLICATION UNDER SUBSECTION 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

(b) the title of proceedings in the existing applications by BMO for a bankruptcy order against each of the Debtors (collectively, the “**Bankruptcy Applications**”) shall be and is hereby changed to:

**(1) IN THE MATTER OF THE BANKRUPTCY OF 1682322 ONTARIO INC.**

in respect of the existing application against Bodkin Financial Corporation;

**(2) IN THE MATTER OF THE BANKRUPTCY OF 326551 CANADA INC.**

in respect of the existing application against Bodkin Leasing Corporation;

**(3) IN THE MATTER OF THE BANKRUPTCY OF 3267911 CANADA INC.**

in respect of the existing application against Bodkin Capital Corporation,

and the Bankruptcy Court Office and registrar is hereby directed to change and modify its court records so as to reflect this change in the titles of such proceedings.

14. **THIS COURT ORDERS** that:

- (a) BMO shall not serve any notice indicating the time and place of the hearing of any of the Bankruptcy Applications or, notwithstanding paragraph 10 of the Receivership Order made in these proceedings, otherwise prosecute any of the Bankruptcy Applications; and
- (b) Notwithstanding paragraph 4(n) of the Receivership Order made in these proceedings, the Receiver shall not consent to the issuance of a bankruptcy order in respect of the any of the Bankruptcy Applications,

prior to the title of proceedings in such proceedings having been changed as provided for in paragraph 13(b) of this Order and an amended and restated bankruptcy application is issue by the Court reflecting the change in the relevant title of proceedings.

15. **THIS COURT ORDERS** that BMO shall not provide the Office of the Superintendent of Bankruptcy (or any divisional office thereof) with a copy of any of the original Bankruptcy Applications and may only provide the Office of the Superintendent of Bankruptcy (or any divisional office thereof) with certified copies of the amended and restated bankruptcy applications issued by the Court reflecting the change in the relevant title of proceedings, and only when such bankruptcy applications are required to be provided to the Office of the Superintendent of Bankruptcy (or any divisional office thereof) pursuant to the *Bankruptcy and Insolvency Act*.

16. **THIS COURT ORDERS** that, notwithstanding paragraph 4(n) of the Receivership Order made in these proceedings, the Receiver shall not file an assignment in bankruptcy for any of the Debtors unless that Debtor's name has first been changed in accordance with paragraphs 6 and 7 of the Approval and Vesting Order made in these proceedings relating to the sale of assets to 776 and BLAC.



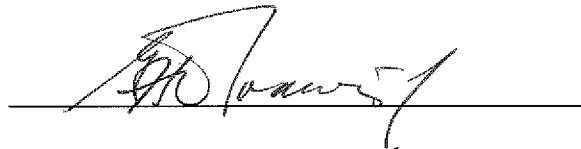
17. **THIS COURT ORDERS** that the Receiver shall not file its Form 87 (Notice and Statement of the Receiver) pursuant to Sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* until each of the Debtors' names have been changed in accordance with paragraphs 6 and 7 of the Approval and Vesting Order made in these proceedings relating to the sale of assets to 776 and BLAC and the Receiver is hereby authorized and directed to file such Form 87 only in respect of name of the Debtor as so changed, provided that, in each case, Section 4 of the Form 87 may describe the business of the Debtor as that formerly performed by Bodkin Financial Corporation, Bodkin Leasing Corporation, or Bodkin Capital Corporation, as applicable, and sold pursuant to the relevant Purchasers pursuant to the Approval and Vesting Order made in these proceedings relating to the sale of assets to 776 and BLAC.

18. **THIS COURT ORDERS** that the Director under the *Canada Business Corporations Act* is hereby authorized and directed to issue a certificate of amendment effecting a change in the name of 776 to Bodkin Capital Corporation and a certificate of amendment effecting a change in the name of 7794312 Canada Inc. to Bodkin Leasing Corporation without any written consent of any individual, heir or personal representative being required pursuant to Section 28 of the Canada Business Corporations Act Regulations, 2001 (SOR/2001 – 512, as amended).

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**BANK OF MONTREAL**

Applicant

- and -

**BODKIN FINANCIAL CORPORATION, ET AL.**

Respondents

Court File No. CV-11-9412-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

**ORDER**

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