

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE MORAWETZ

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FRIDAY, THE 7TH
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**

**APPROVAL AND VESTING ORDER
(SALE OF ASSETS TO SUN LIFE ASSURANCE COMPANY OF CANADA)**

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 sale and pledge transaction (the "**Transaction**") contemplated by an asset purchase and security agreement between Sun Life Assurance Company of Canada (the "**Purchaser**") and the Receiver (the "**Sale and Security Agreement**"), in substantially the form appended to the Report of the Proposed Receiver of the Debtors dated October 3, 2011 (the "**Report**");

(b) vesting in the Purchaser the Purchased Assets as such term is defined in the Sale and Security Agreement (the "**Purchased Assets**"); and

(c) granting the Purchaser a charge over the Pledged Assets as such term is defined in the Sale and Security Agreement (the "**Pledged Assets**"),

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

ON READING the Report and the appendices thereto and on hearing the submissions of counsel for the Receiver, counsel for the Debtors, counsel for the Purchaser, counsel for 7762895 Canada Inc. ("**776**") and Bennington Lease Administration Corp. ("**BLAC**"), and counsel for Bank of Montreal, 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,

98) 1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale and Security Agreement is commercially reasonable and in the best interests of the Debtors and their stakeholders. ^{FC} The execution of the Sale and Security 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 for the conveyance of the Purchased Assets 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**"), the Purchased Assets described in the Sale and Security Agreement 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) the charge (created by the Order of this Honourable Court dated October 7, 2011 pursuant to which the Receiver was appointed) in favour of the Receiver in respect of its fees and disbursements (the "**Receiver's Charge**"); and (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 (all of which are collectively referred to as the “**Encumbrances**”) 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.

3. **THIS COURT ORDERS** that, for the purposes of determining the nature and priority of Claims, the net proceeds received by the Receiver from the Transaction 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 received by the Receiver from the Transaction with the same priority as they had with respect to the Purchased Assets immediately prior to the Transaction, 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. For greater certainty, this paragraph shall not affect that portion of the proceeds arising from the Transaction that is paid by the Purchaser into the Reserve Fund (as such term is defined in the Sale and Security Agreement), in accordance with the Sale and Security Agreement, until such time as such funds are: (a) released by the Trustee (as such term is defined in the Sale and Security Agreement) to the Receiver in accordance with the Administration Agreement between Sun Life, the Receiver and BLAC (the “**Administration Agreement**”); (b) the Purchaser has been repaid the amounts owed to it by the Debtors in full in Accordance with the Administration Agreement; (c) all amounts required to be paid under Article 2 of the Reserve Sharing Agreement between the Receiver and BLAC (the “**Reserve Sharing Agreement**”) have been paid; (d) the Receiver has paid to BLAC the share of any such funds to which it is entitled pursuant to the terms of the Reserve Sharing Agreement; and (e) the Segregated Bank Account and the Servicer Advance Account (as such terms are defined in the Administration Agreement) have been closed in accordance with and pursuant to the terms of the Reserve Sharing Agreement and the Administration Agreement, and the Holding Account (as such term is defined in the Reserve Sharing Agreement) has been closed in accordance with and pursuant to the terms of the Reserve Sharing Agreement.

4. **THIS COURT ORDERS** that, effective upon the delivery of the Receiver’s Certificate to the Purchaser, the Purchaser shall be entitled to the benefit of and is hereby granted a charge (the “**Sun Life Charge**”) on the Pledged Assets (as described in the Sale and Security Agreement), which Sun Life Charge shall rank in priority to all other security interests, trusts,

liens, charges and encumbrances, claims of secured creditors, statutory or otherwise in favour of any person including, without limitation, the Receiver's Charge, but excluding any valid encumbrance arising in the ordinary course of business in the nature of a mechanic's lien or repair and storage lien against a vehicle that forms part of the Pledged Assets.

5. **THIS COURT ORDERS** that Sun Life Charge shall attach to the Pledged Assets and the filing, registration or perfection of the Sun Life Charge shall not be required, and that the Sun Life Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Sun Life Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

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 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 vesting of the Purchased Assets in the Purchaser pursuant to this Order and the creation of the Sun Life Charge pursuant to this Order shall 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 either of them 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 either of them 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.



ENTERED IN / INSCRIT À TORONTO
ON / BOOK NO.
LE / DANS LE REGISTRE NO.:

OCT 07 2011

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Schedule "A" – Form of Receiver's Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**BODKIN FINANCIAL CORPORATION, BODKIN LEASING CORPORATION,
BODKIN CAPITAL CORPORATION**

Respondents

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (the "**Court**") dated October 7, 2011, PricewaterhouseCoopers Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Bodkin Financial Corporation, Bodkin Leasing Corporation and Bodkin Capital Corporation (collectively, the "**Debtors**").

B. Pursuant to an Order of the Court dated October 7, 2011, the Court approved the asset purchase and security agreement between Sun Life Assurance Company of Canada (the "**Purchaser**") and the Receiver (the "**Sale and Security Agreement**") and provided for the vesting in the Purchaser of the Purchased Assets and a charge in favour of the Purchaser over the Pledged Assets, which vesting and charge are to be effective with respect to the Purchased Assets and the Pledged Assets, respectively, 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 Article 5 of the Sale and

Security 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 and Security 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 and Security Agreement;
2. The conditions to Closing as set out in Article 5 of the Sale and Security Agreement have been satisfied or waived by the Receiver and the Purchaser, as the case may be;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

PRICEWATERHOUSECOOPERS INC., in its capacity as Receiver of the undertaking, property and assets of BODKIN FINANCIAL CORPORATION, BODKIN LEASING CORPORATION and BODKIN CAPITAL CORPORATION, and not in its personal capacity

Per: _____

Name: _____

Title: _____

BANK OF MONTREAL

- and -

BODKIN FINANCIAL CORPORATION, ET AL.

Applicant

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**APPROVAL AND VESTING ORDER
(SALE OF ASSETS TO SUN LIFE ASSURANCE
COMPANY OF CANADA)**

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