

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 7TH
JUSTICE MGLAWETZ) 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 7762895 CANADA INC. AND BENNINGTON LEASE
ADMINISTRATION CORP.)**

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**” and, individually, a “**Debtor**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an offer to purchase made by 7762895 Canada Inc. (“**776**”) and Bennington Lease Administration Corp. (“**BLAC**” and, together with 776, the “**Purchasers**”) and to be accepted by the Receiver upon the issuance of this Order (the “**Sale Agreement**”), in substantially the redacted form appended to the Report of the Proposed Receiver of the Debtors dated October 3, 2011 (the “**Report**”) and in substantially

the unredacted form appended to the Supplementary Report to the First Report of the Proposed Receiver of the Debtors dated October 7, 2011 (the "**Supplementary Report**"), and vesting in the Purchasers the Purchased Assets, as such term is defined in the Sale Agreement (the "**Purchased Assets**"), 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 on hearing the submissions of counsel for the Receiver, counsel for the Debtors, counsel for the Purchasers, counsel for Sun Life Assurance Company of Canada ("**Sun Life**") 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 Agreement is commercially reasonable and in the best interests of the Debtors and their stakeholders. The execution of the Sale 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 Purchasers.

2. **THIS COURT ORDERS AND DECLARES** that, upon the delivery of a Receiver's certificate to the Purchasers substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), the Purchased Assets shall vest absolutely in the Purchasers, in accordance with the allocation scheme set out in the Sale Agreement, 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 this Honourable Court dated October 7, 2011 pursuant to which the Receiver was appointed; 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”), but excluding (x) any valid encumbrance arising in the ordinary course of business in the nature of a mechanic’s lien or repair and storage lien pertaining to any vehicle which is the subject of the Transaction and (y) any encumbrance or charge created in favour of Sun Life by the Order of this Honourable Court dated October 7, 2011 pursuant to which the sale by the Receiver of certain leases to Sun Life was approved (collectively, the **“Permitted Encumbrances”**), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets (but excluding the Permitted Encumbrances) are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that, upon presentation by BLAC of:

- (i) the vehicle permit for any vehicle forming part of the Purchased Assets (each, a **“Purchased Vehicle”**) with the transfer application executed by BLAC on behalf of the Debtor who was the prior registered owner of such Purchased Vehicle;
- (ii) a Bill of Sale for the Purchased Vehicle;
- (iii) payment of any federal, provincial or other tax (including HST, GST or retail sales tax) owing on the transfer of such Purchased Vehicle;
- (iv) payment of any licensing fees or other fees or costs for plates or permits or otherwise in respect of the Purchased Vehicle; and
- (v) any other documentation normally required to effect registration of a vehicle transfer, executed by BLAC on behalf of the relevant Debtor(s) in each case where execution by such Debtor(s) is required,

the Ministry of Transportation and Service Ontario or any other governmental department, ministry or agency responsible for vehicle registrations in any other Province or Territory of Canada, are hereby directed to register ownership of such Purchased Vehicle as BLAC may direct.

4. **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.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed, upon filing of the Receiver's Certificate, to immediately sign a resolution on behalf of Bodkin Financial Corporation ("BFC") as the sole shareholder of Bodkin Leasing Corporation ("BLC") and Bodkin Capital Corporation ("BCC"), respectively, to authorize, and then to file articles of amendment with Industry Canada for:

- (a) BLC changing its name to 326551 Canada Inc.; and
- (b) BCC changing its name to 3267911 Canada Inc.

7. **THIS COURT ORDERS** that, notwithstanding the provisions of subsection 171(3) of the *Business Corporations Act* (Ontario) (the "OBCA"), the Receiver be and is hereby authorized and directed, upon filing of the Receiver's Certificate, to complete, execute and file articles of amendment for and on behalf of BFC and any officer and director of BFC (such articles of amendment to be deemed to have been signed by a director or an officer of BFC and executed in accordance with the OBCA when so signed by the Receiver as directed by this Court) for the sole purpose of changing the corporate name of BFC to 1682322 Ontario Inc. (and such amendment shall be deemed to have been duly authorized by Section 168 of the OBCA without any shareholder or director resolution approving such amendment being required), and this Court hereby directs the Director (as defined in the OBCA) to endorse thereon a certificate of amendment upon receipt from the Receiver of two duplicate originals of such articles of amendment together with the prescribed fees and any other required documents under the OBCA (which the Receiver be and is hereby authorized and directed to complete, execute and file for and on behalf of BFC and any officer and director of BFC, if and as required) except for any

~~such documents as have been dispensed or otherwise dealt with pursuant to the deeming provisions contained herein.~~

8. **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 Purchasers all human resources and payroll information in the Debtors' records pertaining to each of the Transferred Employees, as such term is defined in the Sale Agreement. The Purchasers 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.

9. **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 BIA 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 Purchasers 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 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.

10. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

11. **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.

A handwritten signature in black ink, appearing to be "A. D. [unclear]", written over a horizontal line.

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

OCT 07 2011

PER/PAT 

**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 offer to purchase made by 7762895 Canada Inc. and Bennington Lease Administration Corp. (collectively, the "**Purchasers**") and accepted by the Receiver on October 7, 2011 (the "**Sale Agreement**") and provided for the vesting in the Purchasers of the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchasers of a certificate confirming: (i) the payment by the Purchasers of the cash portion of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 3.5 and 3.6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; 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 Purchasers have paid and the Receiver has received the cash portion of 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 3.5 and 3.6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers, 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

Applicant

- and - **BODKIN FINANCIAL CORPORATION, ET AL.**

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceedings commenced at Toronto

**APPROVAL AND VESTING ORDER
(SALE OF ASSETS TO 7762895 CANADA INC.
AND BENNINGTON LEASE ADMINISTRATION
CORP.)**

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