

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) THURSDAY, THE 20<sup>th</sup> DAY  
JUSTICE NEWBOULD ) OF DECEMBER, 2012



BANK OF MONTREAL

Applicant

- and -

CARNIVAL NATIONAL LEASING LIMITED AND  
CARNIVAL AUTOMOBILES LIMITED

Respondents

**APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C., 1985, s.101 of the *Courts of Justice Act*, R.S.O., 1990, c. C-43 and Rule  
14.05(2) and (3)(d), (g) and (h) of the Rules of Civil Procedure**

APPROVAL AND VESTING ORDER

**THIS MOTION**, made by PricewaterhouseCoopers Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Carnival National Leasing Limited ("Carnival Leasing" and Carnival Automobiles Limited ("Carnival Automobiles" and, together with Carnival Leasing, the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Carnival Limited Partnership on its own behalf and on behalf of 2353929 Ontario Limited (collectively, the "Purchasers") dated as of

December 14, 2012 and appended to the Third Report of the Receiver dated December 14, 2012 (the "Third Report"), and vesting in the Purchasers all right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report and on hearing the submissions of counsel for the Receiver, counsel for Bank of Montreal, ~~counsel for Royal Bank of Canada, counsel for David Hirsh~~ and counsel for the Purchasers, no other person having been served with the motion as appears from the affidavit of service of Edmond Lamek sworn December 17, 2012 filed:

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the Notice of Motion herein and the materials filed by the Receiver in support of this Motion is hereby abridged, such that this motion is properly returnable on December 20, 2012 and further service thereof on any other person be and is hereby dispensed with.
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 Purchasers.
3. **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"), all right, title and interest in and to the Purchased Assets described in the Sale Agreement 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 the Honourable Justice Newbould dated February 15, 2011; 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 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 (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.

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, 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 each of each of the Debtors and any officer and director of each Debtor (each such articles of amendment to be deemed to have been signed by a director or an officer of the applicable Debtor 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 Carnival Leasing to 1555644 Ontario Limited and the corporate name of Carnival Automobile to 661215 Ontario Limited (and such amendments shall be deemed to have been duly authorized by Section 168 of the OBCA without any shareholder or director resolution approving such amendments being required), and this Court hereby directs the Director (as defined in the OBCA) to endorse thereon certificates of amendment upon receipt from the Receiver of two duplicate originals of each 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 the Debtors and any officer and director of the Debtors, if and as required) except for any such documents as have been dispensed or otherwise dealt with pursuant to the deeming provisions contained herein.

7. **THIS COURT ORDERS** that upon filing of the articles of amendment changing the names of each of the Debtors in accordance with paragraph 6 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 -

**1555644 ONTARIO LIMITED AND  
661215 ONTARIO LIMITED**

Respondents

**APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s.101 of the *Courts of Justice Act*, R.S.O., 1990, c. C-43 and Rules 14.05(2) and (3)(d), (g) and (h) of the Rules of Civil Procedure**

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 the Debtor and any bankruptcy order issued pursuant to any such applications; and

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

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

10. **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.

*John T.*

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

DEC 20 2012

**Schedule A – Form of Receiver's Certificate**

Court File No. CV-10-9029-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

B E T W E E N:

**BANK OF MONTREAL**

Applicant

- and -

**CARNIVAL NATIONAL LEASING LIMITED AND CARNIVAL  
AUTOMOBILES LIMITED**

Respondents

**APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, s.101  
of the *Courts of Justice Act*, R.S.O., 1990, c. C-43 and Rule 14.05(2) and (3)(d), (g) and (h) of  
the Rules of Civil Procedure**

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (the "Court") dated February 15, 2011, PricewaterhouseCoopers Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Carnival National Leasing Limited and Carnival Automobiles Limited (collectively, the "Debtor").

B. Pursuant to an Order of the Court dated December 20, 2012, the Court approved the agreement of purchase and sale made as of December 14, 2012 (the "Sale Agreement") between the Receiver and Carnival Limited Partnership on its own behalf and on behalf of an affiliated corporation to be incorporated (collectively, the "Purchasers") and provided for the vesting in the Purchasers of all 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 Purchasers of a certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 5 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 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 Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ on December \_\_\_\_, 2012.

**PRICEWATERHOUSECOOPERS  
INC., in its capacity as Receiver of the  
undertaking, property and assets of  
Carnival National Leasing Limited and  
Carnival Automobiles Limited, and not  
in its personal capacity**

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\_\_\_\_\_  
Name:

Title:

<u>Applicant</u>	<u>- and -</u>	<u>CARNIVAL NATIONAL LEASING LIMITED et al.</u>	<u>Respondents</u>
<b>BANK OF MONTREAL</b>		<b>ONTARIO SUPERIOR COURT OF JUSTICE (Commercial List)</b>	<b>Proceedings Commenced at Toronto</b>

**ORDER**  
**(December 20, 2012)**

**BORDEN LADNER GERVAIS LLP**  
Barristers and Solicitors  
Scotia Plaza, 40 King Street West  
Toronto, Ontario M5H 3Y4

**Edmond F.B. Lamek – LSUC No. 33338U**  
Direct Tel: (416) 367-6311  
Direct Fax: (416) 361-2436

Lawyers for the Receiver