

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE

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TUESDAY, THE 12TH

JUSTICE OSBORNE

DAY OF SEPTEMBER, 2023

B E T W E E N :

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants
(Defendants to the Counterclaim)

ORDER

THIS MOTION, made by The Fuller Landau Group Inc., in its capacity as the Court-appointed liquidator and receiver (in these capacities, the “**Liquidator**”) of the undertaking, property and assets of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. o.a. Old Pro Driving Range (“**Old Pro**”, and together with Calldron are the “**Companies**”) for an order:

- (a) if necessary, abridging and validating the time for service and filing of the notice of motion and the motion record contained herein, validating service and dispensing with further service upon any other persons not already served with this notice of motion and motion record so that the motion is properly returnable today; and
- (b) amending the Approval and Vesting Order of the Honourable Justice Cavanagh dated July 12, 2023 (the “**Vesting Order**”), in the form attached at Appendix “A” hereto,

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

ON READING the affidavit of Sue Tomlinson sworn September 11, 2023, and the exhibits thereto, and on hearing the submissions of counsel for the Liquidator, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Victoria Gifford sworn September 11, 2023, filed:

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

AMENDED APPROVAL AND VESTING ORDER

2. **THIS COURT ORDERS** that the Vesting Order is hereby amended in the form attached hereto at Appendix “A”.

APPENDIX "A"

Court File No.: CV-20-00644241-00CL

**ONTARIO
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CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants

(Defendants to the Counterclaim)

AMENDED APPROVAL AND VESTING ORDER

THIS MOTION, made by The Fuller Landau Group Inc., in its capacity as the Court-appointed receiver/liquidator (the "**Liquidator**") of the undertaking, property and assets of Calldron Gas Bars Ltd. ("**Calldron**") and 1195705 Ontario Inc. o.a. Old Pro Driving Range ("**Old Pro**", and together with Calldron are the "**Companies**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of

purchase and sale (the "**Sale Agreement**") between the Liquidator and 1000625308 Ontario Inc. (the "**Purchaser**"), as successor in interest to Munish Sharma, dated May 17, 2023, and appended to the Third Report of the Liquidator dated June 30, 2023 (the "**Report**"), and vesting in the Purchaser the Calldron's 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 of the Liquidator, the Confidential Appendices, factum, and on hearing the submissions of counsel for the Liquidator, Chris Kommatas ("**Chris**") and George Vastis ("**George**", and together with Chris are the "**Principals**"), and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Victoria Gifford sworn June 30, 2023, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Liquidator is hereby authorized and approved, with such minor amendments as the Liquidator may deem necessary. The Liquidator 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 Liquidator's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Liquidator's Certificate**"), all of Calldron's right, title and interest in and to the Purchased Assets described in the Sale 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) any encumbrances or charges created by the Order of the Honourable Justice Dietrich dated December 20, 2022; (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 C 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 D) 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 upon the registration in the Land Registry Office for the Registry Division of Peel (No. 43) of an Application for Vesting Order in the form prescribed by the *Land Registration Reform Act* duly executed by the Liquidator, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (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 C hereto.

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 Liquidator'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 Liquidator to file with the Court a copy of the Liquidator's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Liquidator is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Companies' records pertaining to the Companies' past and current employees. 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 Companies.

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 the Companies and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Companies;

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 the Companies and shall not be void or voidable by creditors of the Companies, 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.

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 Liquidator 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 Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.

Schedule A – Form of Liquidator’s Certificate

Court file no. CV-22-00680668-00CL

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

BETWEEN:

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants
(Defendants to the Counterclaim)

LIQUIDATOR’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Dietrich of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 20, 2022, The Fuller Landau Group Inc. was appointed as the receiver and liquidator (the “**Liquidator**”) of the property, assets and undertaking of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. cob as Old Pro Driving Range (“**Old Pro**” and together with Calldron are the “**Companies**”).

B. Pursuant to an Order of the Court dated July 12, 2023 (the “**Approval Order**”), the Court approved the agreement of purchase and sale made as of May 17, 2023 (the “**Sale Agreement**”) between the Liquidator and 1000625308 Ontario Inc. (the “**Purchaser**”), as successor in interest to Munish Sharma, and provided for the vesting in the Purchaser of the Calldron’s 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 Liquidator 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 the Sale Agreement have been satisfied or waived by the Liquidator and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Liquidator.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE LIQUIDATOR CERTIFIES the following:

1. The Purchaser has paid and the Liquidator 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 the Sale Agreement have been satisfied or waived by the Liquidator and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Liquidator.
4. This Certificate was delivered by the Liquidator at _____ on _____.

The Fuller Landau Group Inc. in its capacity as Liquidator of the property, assets and undertaking of Calldron Gas Bars Ltd. and 1195705 Ontario Inc. cob as Old Pro Driving Range, and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – Purchased Assets

PIN: 13284-0194

PT LT 10 CON 1 EAST OF HURONTARIO ST., PT 1 43R16566, EXCEPT PT 1,2,3,4 43R17986, PT 1 43R21424; PT 3 & 4 43R23420; T/W PT 4 43R15783 AS IN TT81030; S/T EASE IN FAVOUR OF MISSISSAUGA HYDRO-ELECTRIC COMMISSION AS IN LT1218788; PT LT CON 1 EAST OF HURONTARIO ST., PT 2 &3 43R21424; T/W PT 4 43R15783 AS IN TT81030; S/T EASE IN FAVOUR OF MISSISSAUGA HYDRO-ELECTRIC COMMISSION AND BELL CANADA AS IN LT1019744;S/T EASE IN FAVOUR OF MISSISSAUGA-HYDRO ELECTRIC COMMISSION OVER PT 6 43R23420 AS IN LT1289416; MISSISSAUGA, municipally known as 480 Derry Road East, Mississauga Ontario

Schedule C – Claims to be deleted and expunged from title to Real Property

PR4163405, Registration of Court Order dated January 20, 2023

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

LT1941506, Notice of Lease dated May 17, 1999

PR3002048, Notice of Assignment of Leasehold Interest dated October 3, 2016

LT1019744, Transfer Easement dated June 20, 1989

LT1218788, Transfer Easement dated May 15, 1991

LT1289416, Transfer Easement dated January 22, 1992

GEORGE VASTIS et al
Plaintiffs

CHRISTOS KOMMATAS et al
Defendants

Court File No.: CV-20-00644241-00CL

CHRISTOS KOMMATAS
Plaintiff by Counterclaim

GEORGE VASTIS
Defendant to the Counterclaim

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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