

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) TUESDAY, THE 28<sup>TH</sup>  
 )  
JUSTICE NEWBOULD ) DAY OF OCTOBER, 2014  
 )



**BANK OF AMERICA, N.A.,  
as Administrative Agent**

Applicant

- and -

**CPI CORP., CPI PORTRAIT STUDIOS OF CANADA CORP. and  
CPI CANADIAN IMAGES**

Respondents

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Duff & Phelps Canada Restructuring Inc. in its capacity as the Court-appointed receiver and receiver and manager (the "**Receiver**") of the undertaking, property and assets of CPI Corp., an unlimited liability company organized under the laws of Nova Scotia, CPI Portrait Studios of Canada Corp., an unlimited liability company organized under the laws of Nova Scotia, and CPI Canadian Images, an Ontario Partnership (collectively, the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**Purchase Agreement**") between the Receiver and 0993468 B.C. Unlimited Liability Company (the "**WMT Purchaser**"), 0993470 B.C. Unlimited Liability Company (the "**SRS Purchaser**" and together with the WMT Purchaser, the "**Canadian Purchasers**") and Photos Unlimited Processing LLC (the "**US Purchaser**" and together with the WMT Purchaser and the SRS Purchaser, collectively, the "**Purchasers**") dated October 17, 2014 and appended to the Fifth Report of the Receiver dated October 21, 2014 (the "**Fifth Report**"),

and vesting in the Purchasers the Debtors' right, title and interest in and to the assets described in the Purchase Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report and on hearing the submissions of counsel for the Receiver, the Applicant, the Purchasers and those parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Karin Schwarz sworn October 22, 2014, filed:

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record, including the Fifth Report, be and is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Purchase 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 of the Debtors' right, title and interest in and to the:
  - (a) WMT Purchased Assets (as defined in the Purchase Agreement) shall vest absolutely in the WMT Purchaser;
  - (b) SRS Purchased Assets (as defined in the Purchase Agreement) shall vest absolutely in the SRS Purchaser; and
  - (c) US Purchased Assets (as defined in the Purchase Agreement) shall vest absolutely in the US Purchaser;

in each case, 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 Mr. Justice Morawetz dated April 15, 2013 (the "**Receivership Order**") or the Order of the Honourable Justice Morawetz dated April 30, 2013 (the "**Comeback Order**") other than the Receiver's Charge (as defined in the Receivership Order and amended pursuant to paragraph 13 of this Order); 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**", which term for greater certainty shall not include the Receiver's Charge) 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.

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, 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 the Debtors' past and current employees, including personal information of the Offerees (as defined in the Purchase Agreement). The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal

information provided to them in a manner which is in all material respects identical to the prior use of such information by the Debtors.

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 Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any 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 any Debtor and shall not be void or voidable by creditors of any Debtor, 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).

#### **DISTRIBUTION OF PROCEEDS AND OTHER CASH**

9. THIS COURT ORDERS that, immediately following delivery of the Receiver's Certificate to the Purchasers in escrow, the Receiver shall be authorized and directed, without further Order of the Court, to distribute to the Applicant all cash or cash equivalents from the sale proceeds of the Transaction (the "**Proceeds**"), by directing the Purchasers to pay the Proceeds directly to the Applicant, and such distribution shall be free and clear of all Encumbrances other than those in favour of the Applicant, to be applied against the indebtedness, liabilities and obligations owing by the Debtors to the Lenders under the Credit Documents (each as defined in the Fifth Report) (the "**Secured Debt**").

10. THIS COURT ORDERS AND DIRECTS that following the filing of the Receiver's Certificate, the Receiver shall be authorized and directed, without further Order of the Court, to distribute to the Applicant all monies (other than monies that constitute Purchased Assets) deposited in the Post Receivership Accounts (as defined in the Receivership Order) from and after the filing of the Receiver's Certificate immediately after deposit of such monies, with all such distributions to be made free and clear of all Encumbrances other than those in favour of the Applicant, to be applied against the Secured Debt; provided, however, that such distributions shall be subject to a reserve in the sum of CDN\$725,000 (the "**Reserve**") for the purpose of satisfying the Receiver's fees and disbursements and other expenses, liabilities or obligations anticipated by the Receiver in connection with the wind down of these receivership proceedings.

11. THIS COURT ORDERS AND DIRECTS that any remaining balance in the Reserve shall be distributed by the Receiver to the Applicant immediately prior to the discharge of the Receiver, free and clear of all Encumbrances other than those in favour of the Applicant, to be applied against the Secured Debt.

12. THIS COURT ORDERS AND DECLARES that the Receiver shall have no liability in carrying out the provisions of this Order under the *Alberta Corporate Tax Act* and/or the *Tax Administration Act* (Quebec) and any such liabilities are hereby forever released, barred and discharged as against the Receiver.

### **RECEIVER'S CHARGE**

13. THIS COURT ORDERS that, upon the delivery of the Receiver's Certificate to the Purchasers, the Receiver's Charge shall hereby be amended such that it shall be a charge against the WMT Purchased Assets and the SRS Purchased Assets in favour of the Receiver to only secure the obligations of the Canadian Purchasers set out in the letter agreement regarding certain tax matters between the Receiver and the Canadian Purchasers to be dated on or about the date of delivery of the Receiver's Certificate (the "**Indemnity**"). The Receiver's Charge shall continue to have the priority set out in the Comeback Order as against the WMT Purchased Assets and the SRS Purchased Assets.

14. THIS COURT ORDERS that the Receiver's Charge shall be forever released and discharged upon the earlier of the satisfaction or expiry of the Canadian Purchasers' obligations under the Indemnity.

15. THIS COURT ORDERS AND DIRECTS the Receiver to deliver written confirmation to the Canadian Purchasers upon the earlier of the satisfaction or expiry of the Canadian Purchasers' obligations under the Indemnity, certifying that same has occurred.

**NAME CHANGES**

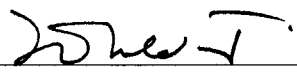
16. THIS COURT ORDERS that the Receiver is authorized, following the completion of the Transaction, to execute, deliver and file any document, including without limitation, any articles of reorganization, required in order to effect a change of the corporate name of each of the Debtors, and this Court waives any third party requirement or required consent pursuant to any Canadian federal or provincial legislation relating to same.

17. 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.

ENTRÉ EN AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:



OCT 28 2014

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

Court File No. CV-13-10069-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BANK OF AMERICA, N.A.,  
as Administrative Agent**

Applicant

- and -

**CPI CORP., CPI PORTRAIT STUDIOS OF CANADA CORP. and  
CPI CANADIAN IMAGES**

Respondents

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the "**Court**") dated April 15, 2013, Duff & Phelps Canada Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of CPI Corp., an unlimited liability company organized under the laws of Nova Scotia, CPI Portrait Studios of Canada Corp., an unlimited liability company organized under the laws of Nova Scotia, and CPI Canadian Images, an Ontario Partnership (collectively, the "**Debtors**").

B. Pursuant to an Order of the Court dated October 28, 2014, the Court approved the asset purchase agreement made as of October 17, 2014 (the "**Purchase Agreement**") between the Receiver and 0993468 B.C. Unlimited Liability Company, 0993470 B.C. Unlimited Liability Company and Photos Unlimited Processing LLC (collectively, the "**Purchasers**") and provided for the vesting in the Purchasers of the Debtors’ 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 Cash Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 6 of the Purchase 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 Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid and the Applicant, at the direction of the Receiver, has received the Cash Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Purchase Agreement;
2. The conditions to Closing as set out in Article 6 of the Purchase Agreement have been satisfied or waived by the Receiver and the Purchasers;
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].

**DUFF & PHELPS CANADA  
RESTRUCTURING INC., in its capacity as  
Receiver of the undertaking, property and  
assets of CPI CORP., CPI PORTRAIT  
STUDIOS OF CANADA CORP. and CPI  
CANADIAN IMAGES, and not in its  
personal capacity**

Per: \_\_\_\_\_

Name:

Title:



BANK OF AMERICA, N.A., and CPI CORP., CPI PORTRAIT STUDIOS OF  
as Administrative Agent CANADA CORP. and  
CPI CANADIAN IMAGES  
Applicant Respondents

Court File No: CV-13-10069-00CL

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

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**

**Osler, Hoskin & Harcourt LLP**  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8

Marc Wasserman (LSUC#44066M )  
Tel: 416.862.4908  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

Caitlin Fell (LSUC #60091H)  
Tel: 416 862 6690  
Email: [cfell@osler.com](mailto:cfell@osler.com)

Lawyers for Duff & Phelps Canada Restructuring  
Inc. its capacity Court-appointed Receiver  
F. 1142540