



Court File No. 08-CL-7413

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

THE HONOURABLE MR.) FRIDAY, THE 27th DAY
)
JUSTICE WILTON-SIEGEL) OF JUNE, 2008

B E T W E E N:

THE BANK OF NOVA SCOTIA

Applicant

- and -

NIAGARA VINTNERS INCORPORATED

Respondent

**APPROVAL AND VESTING ORDER
(REAL PROPERTY)**

THIS MOTION, made by Deloitte & Touche Inc., in its capacity as the Court-appointed interim receiver and receiver and manager (the "**Receiver**") of the undertaking, property and assets of Niagara Vintners Incorporated (the "**Debtor**") for an Order vesting in, as applicable, Diamond Estates Wines & Spirits Ltd. ("**Diamond**") and/or Niagara Cellars Ltd., a wholly-owned subsidiary of Diamond, as the designee and assignee of Diamond as purchaser of the Real Property as defined below (as applicable, the "**Purchaser**") the Debtor's right, title and interest in and to the real property assets described in an agreement of purchase and sale as amended or supplemented (the "**Sale Agreement**") between the Receiver and the Purchaser made as of June 11, 2008 and also approved by this Honourable Court pursuant to an approval and vesting order dated June 27, 2008 (the "**Personal Property Order**") and referred to in the First Report of the Receiver dated June 23, 2008, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report, the Supplemental Report of the Receiver dated June 23, 2008 (the “**Supplemental Report**”), and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Mary Arzoumanidis sworn June 24, 2008 filed:

SALE TRANSACTION

1. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings ascribed thereto in the Sale Agreement.
2. **THIS COURT ORDERS AND DECLARES** that the sale transaction (the “Transaction”) contemplated by the Sale Agreement is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtor and its stakeholders. The execution of the Sale Agreement 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 Real Property (as that term is defined in the Sale Agreement) to the Purchaser.
3. **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 all of the Debtor’s right, title and interest in and to the Real Property described in the Sale Agreement and listed on Schedule “B” hereto 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 Morawetz dated February 25, 2008 (as amended, supplemented or restated); (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 Real Property are hereby expunged and discharged as against the Real Property.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Niagara North of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Real Property identified in Schedule "B" hereto 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.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Real Property shall stand in the place and stead of the Real Property, 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 Real Property with the same priority as they had with respect to the Real Property immediately prior to the sale, as if the Real Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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 Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "10.2" to the Sale Agreement. 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 Debtor.

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 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 Real Property in the Purchaser 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 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).

AID AND RECOGNITION

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.



Joanne Nicoara
Registrar, Superior Court of Justice
ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 27 2008

PER/PAR: JSN

Schedule A – Form of Receiver’s Certificate

Court File No. 08-CL-7413

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

THE BANK OF NOVA SCOTIA

Applicant

- and -

NIAGARA VINTNERS INCORPORATED

Respondent

RECEIVER’S CERTIFICATE
(REAL PROPERTY)

RECITALS:

A. Pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the “**Court**”) dated February 25, 2008, Deloitte & Touche Inc. was appointed as the interim receiver and receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Niagara Vintners Incorporated (the “**Debtor**”).

B. Pursuant to two Orders of the Court dated June 27, 2008, the Court approved the agreement of purchase and sale made as of June 11, 2008 (the “**Sale Agreement**”) between the Receiver and Diamond Estates Wines & Spirits Ltd. (“**Diamond**”) and provided for the vesting in, as applicable, Diamond, and/or Niagara Cellars Ltd., a wholly owned subsidiary of Diamond, as the designee and assignee of Diamond as purchaser (the “**Purchaser**”) of the Debtor’s right, title and interest in and to the Transferred Assets, which vesting is to be effective with respect to the Transferred Assets 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 Transferred Assets; (ii) that the conditions to Closing as set out in Articles VII, VIII and IX of the Sale 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 Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Transferred Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Articles VII, VIII and IX of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME][on _____ [DATE].

DELOITTE & TOUCHE INC., in its capacity as Receiver of the undertaking, property and assets of Niagara Vintners Incorporated, and not in its personal capacity

Per: _____
Name:
Title:

Schedule B

Real Property

Legal Description:

Firstly: PIN 46369-0168 (LT)

Part of Lots 154 & 155, Niagara, designated as Parts 3 & 4 on Plan 30R-1417, save and except Part 1 on Plan 30R-11847; subject to RO14754; Niagara-on-the-Lake

Secondly: PIN 46369-0074 (LT)

Part of Township Lots 154 & 155, Niagara, designated as Part 2 on Plan 30R-9972; Niagara-on-the-Lake

Municipal Description:

1607 Niagara Stone Road, Virgil, Ontario

Schedule C

Claims to be deleted and expunged from title to Real Property

1. Instrument No. NR110308 registered July 18, 2006, being a Charge/Mortgage of Land in favour of Wiens Family Farms Inc. and Holdco (St. Catharines) Inc. (the "**Wiens Charge**").
2. Instrument No. NR112995 registered August 10, 2006 being a Charge/Mortgage of Land in favour of Victoria Meadows Townhomes Inc. (the "**Victoria Charge**").
3. Instrument No. NR113131 registered August 11, 2006, being a postponement of the Wiens Charge to the Victoria Charge.
4. Instrument No. NR127717 registered January 8, 2007 being a Charge/Mortgage of Land registered in Bank of Nova Scotia (the "**BNS Charge**").
5. Instrument No. NR129016 registered January 19, 2007, being a postponement of the Victoria Charge to the BNS Charge.
6. Instrument No. NR129017 registered January 19, 2007, being a postponement of the Wiens Charge to the BNS Charge.
7. Instrument No. NR150288 registered August 23, 2007 being a construction lien in favour of Fred Giessler Electrical Ltd. (the "**Fred Lien**").
8. Instrument No. NR155045 registered October 3, 2007, being a Certificate of Action with respect to the Fred Lien.
9. Instrument No. NR165777 registered January 22, 2008 being a Charge/Mortgage of Land in favour of Steve Fernick and Beverly Hand.
10. Instrument No. NR168754 registered February 26, 2008 being a court order of the Superior Court of Justice appointing Deloitte & Touche as interim receiver and receiver and manager of all assets of Niagara Vintners Incorporated.
11. Instrument No. NR155220 registered on October 4, 2007 being a construction lien in favour of Mattina Mechanical Limited (the "**Mattina Lien**").
12. Instrument No. NR159113 registered November 13, 2007, being a Certificate of Action with respect to the Mattina Lien.

Schedule D

Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property (unaffected by Vesting Order)

1. Instrument No. NTP14754 registered December 13, 1951, being an easement in favour of The Bell Telephone Company of Canada.
2. Instrument No. RO493091 registered March 4, 1985, being the St. Catharines Airport Regulations.
3. Instrument No. NR101625 registered May 2, 2006, being a Site Plan Agreement (the "**Site Plan**") between The Corporation of the Town of Niagara-on-the-Lake (the "**Town**") and Niagara Vintners Incorporated.
4. Instrument No. NR153458 registered September 21, 2007, being an amendment to the Site Plan.
5. Instrument No. NR159219 registered November 14, 2007, being an amendment to the Site Plan.

IN THE MATTER OF AN APPLICATION UNDER SECTION 47 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3
AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C-43

THE BANK OF NOVA SCOTIA - and - NIAGARA VINTNERS INCORPORATED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER
(REAL PROPERTY)

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Solicitors for Deloitte & Touche Inc., in its capacity as
Interim Receiver and Receiver and Manager