



Court File No. CV-19-00008866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE

J. Wilcox

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FRIDAY, THE 14TH DAY OF
MAY, 2021

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

and

NAUSS PLUMBING & HEATING INC.

Respondent

SALE APPROVAL AND VESTING ORDER

(7 Millichamp St. Property)

THIS MOTION, made by MNP Ltd., in its capacity as court appointed receiver and manager (the “**Receiver**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between the Receiver and Darcy Paul Mullen, dated April 22, 2021, and an order vesting in XMD Inc., the nominee of Darcy Paul Mullen (the “**Purchaser**”), all of Nauss Plumbing & Heating Inc.’s (“**Nauss**”) right, title, benefit and interest in and to the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”) and other relief, was heard this day, via videoconference, due to the COVID-19 pandemic.

ON READING the Second Report of the Receiver dated May 4, 2021 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver and any such other counsel

as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Angela Makris, sworn May 4, 2021, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and of the Motion Record herein, be and is hereby validated and abridged so that this Motion is properly returnable today and hereby dispenses with any further service hereof.
2. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Asset 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 Purchaser.
4. **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 (the "Receiver's Certificate"), all of Nauss's right, title, benefit and interest in and to the Purchased Assets described in the Asset Purchase Agreement, and more particularly set out in **Schedule D**, 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 Receivership Order dated November 13, 2020; (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 B** 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 C**) and, for greater certainty, this

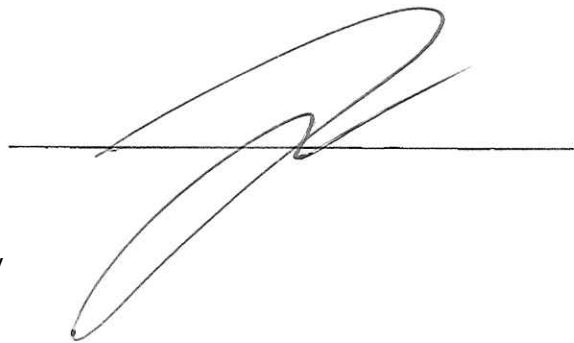
Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that upon the registration in the applicable land registry office or land titles office of a transfer/deed of land or equivalent document, or of an application for registration of this Order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Purchaser as the owner of the subject 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 B** hereto.
6. **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.
7. **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 Nauss's records pertaining to Nauss's 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 Nauss.
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 Nauss and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of Nauss;

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

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of section 6(3) of the *Retail 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.

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line that extends to the right and then curves back down to the end of the signature.

Issued and entered in Sudbury, Ontario, this 18th day of May, 2021 by

Schedule A – Form of Receiver’s Certificate

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hennessey of the Ontario Superior Court of Justice (the “**Court**”) dated November 13, 2020, MNP Ltd. was appointed as receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Nauss Plumbing & Heating Inc. (“**Nauss**”).

B. Pursuant to an Order of the Court dated May 11, 2021, the Court approved the agreement of purchase and sale made as of April 22, 2021 (the “**Asset Purchase Agreement**”) between the Receiver and Darcy Paul Mullen, and provided for the vesting in and to, XMD Inc., the nominee of Darcy Paul Mullen (the “**Purchaser**”), of all of Nauss’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 Receiver 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 Asset Purchase 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 Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, respectively; 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].

MNP LTD. solely in its capacity as receiver and manager of NAUSS HEATING & PLUMBING INC., and not in any other capacity

Per: _____
Name:
Title:

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

SD341549 – Charge – From NAUSS PLUMBING & HEATING INC. to CANADIAN IMPERIAL BANK OF COMMERCE

SD341553 – Notice of Assignment of Rents – General – from NAUSS PLUMBING & HEATING INC. to CANADIAN IMPERIAL BANK OF COMMERCE

SD342507 – Charge - From NAUSS PLUMBING & HEATING INC. to 739572 ONTARIO LIMITED

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

(unaffected by the Vesting Order)

None

Schedule D – Description of Lands

**PIN 73484-0035 (LT): PCL 53626 SEC SES; FIRSTLY LT 22 PL M1034 HAGAR;
SECONDLY: PT LT 12 CON 3 HAGAR PT 1, 53R16102; MARKSTAY-WARREN**

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**ONTARIO
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Proceeding commenced at:
SUDBURY

**SALE APPROVAL AND VESTING
ORDER
(7 MILLICHAMP ST. PROPERTY)
(MAY 14, 2021)**

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**Lawyers for the Court-Appointed
Receiver, MNP Ltd.**