

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

THE HONOURABLE MR.) TUESDAY, THE 14th
)
JUSTICE PATTILLO) DAY OF DECEMBER, 2021

B E T W E E N:

1951584 ONTARIO INC. DBA MAXIUM FINANCIAL SERVICES

Applicant

- and -

PULSE RX INC. AND FAMILY PHARMACY CLINIC INC.

Respondents



APPROVAL AND VESTING ORDER

THIS MOTION, made by **MNP LTD.**, in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Pulse RX Inc. (“**Pulse**”) and Family Pharmacy Clinic Inc. (collectively, the “**Debtors**”) for an order, *inter alia*,: (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Purchase Agreement**”) dated November 25, 2021 between the Receiver and 2047944 Ontario Inc. (the “**Purchaser**”) and appended as Appendix “E” and Confidential Appendix “B” to the First Report of the Receiver dated December 8, 2021 (the “**First Report**”); (ii) vesting in the Purchaser, Pulse’s right, title and interest in and to the assets described in the Purchase Agreement (the “**Purchased Assets**”); and (iii) approving the First Report and the activities of the Receiver as described therein, was heard by video conference due to the COVID-19 crisis in Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, and any other parties appearing 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 Shaun Parsons sworn December 10, 2021 filed:

SERVICE

1. **THIS COURT ORDERS** that the time and method for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF SALE TRANSACTION

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, the implementation and process of the Receiver of the sale process 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 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 (the "**Receiver's Certificate**"), all of Pulse's right, title and interest in and to the Purchased Assets described in the Purchase 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 McEwen dated June 10, 2021; (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 including those Claims listed on **Schedule "C"** hereto and, for greater

certainty, this Court orders that all of the Claims 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 (the “**Net Proceeds**”) 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 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:

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

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

RECEIVER'S ACTIVITIES

7. **THIS COURT ORDERS** that the First Report and the activities described therein are hereby approved.

SEALING

8. **THIS COURT ORDERS** that the Confidential Appendix is sealed and shall not form part of the public record until further order of the Court to be sought following the conclusion of the Transaction.

INFORMATION REGARDING THE PURCHASED ASSETS

9. **THIS COURT ORDERS** that Martin Kusmirek, former President and sole officer of Pulse, provide all passwords, usernames, log in information, and all information otherwise requested by the Receiver in order to access the Purchased Assets to effectuate the Transaction.

GENERAL

10. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.

11. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction to give effect to this Order and to assist the Debtors, the Purchaser, the Receiver and their respective 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 the Debtors, the Purchaser, and the Receiver, as an officer of this Court, as may be necessary or desirable to recognize and give effect to this Order and to assist the Debtors, the Purchaser, the Receiver and their respective agents in carrying out the terms of this Order.



Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-21-00661434-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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B E T W E E N:

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Applicant

- and -

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice McEwen of the Ontario Superior Court of Justice (the “**Court**”) dated June 10, 2021, MNP Ltd. was appointed as the receiver and receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Pulse RX Inc. (“**Pulse**”) and Family Pharmacy Clinic Inc.

B. Pursuant to an Order of the Court dated December 14, 2021, the Court approved the agreement of purchase and sale attached as Appendix “●” to the First Report of the Receiver dated December 8, 2021 (the “**Purchase Agreement**”) between the Receiver and 2047944 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of Pulse’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 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 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 Purchase Agreement;
2. The conditions to Closing as set out in the Purchase 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].

MNP LTD, in its capacity as the court appointed receiver of PULSE RX and FAMILY PHARMACY CLINIC INC., and not in its personal or corporate capacity

Per: _____
Name:
Title:

Schedule “B” – the Purchased Assets

- the Purchased Contracts:
 - the Re kai Centre Contracts;
 - Service Agreement between the Company and Quad County Support Services dated June 1, 2015
 - Service Agreement between the Company and Garden Court Nursing Home dated April 1, 2011;
- the Patient Records;
- the Goodwill;
- the Purchased Inventory and Supplies;
- the Books and Records; and
- the Authorizations,

but, for greater certainty, in each case excluding any Excluded Assets. Each as defined in the Purchase Agreement.

Schedule “C” – Claims to be deleted and expunged

- Desante Financial Services Inc. security registered under the PPSA bearing File Number 628224138;
- McKesson Canada Corporation security registered under the PPSA bearing File Number 663756759;
- 2047944 Ontario Inc. security registered under the PPSA bearing File Number 701950401;
- Desante Financial Services Inc. security registered under the PPSA bearing File Number 708251193;
- LPG Pharmaceutical Advisors Inc. security registered under the PPSA bearing File Number 721571742;
- Erinwood Ford Sales Inc. security registered under the PPSA bearing File Number 732098079; and
- Desante Financial Services Inc. security registered under the PPSA bearing File Number 628224147.

**1951584 ONTARIO INC. dba MAXIUM
FINANCIAL SERVICES**

and

**Court File No. CV-21-00661434-00CL
PULSE RX INC. and FAMILY PHARMACY CLINIC
INC.**

Applicant

Respondents

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

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

WEISZ FELL KOUR LLP

Royal Bank Plaza, South Tower
200 Bay Street, Suite 2305, P.O. Box 120
Toronto, ON M5J 2J3

Caitlin Fell LSO No. 60091H

cfell@wfklaw.ca

Tel: 416.613.8282

Shaun Parsons LSO No. 81240A

sparsons@wfklaw.ca

Tel: 416.613.8284

Fax: 416.613.8290

**Lawyers for the Receiver, MNP LTD, in its
capacity as the court appointed receiver of
PULSE RX and FAMILY PHARMACY
CLINIC INC.**