



Court File No. CV-23-00711609-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

TUESDAY, THE 7TH

JUSTICE CONWAY

)

DAY OF JANUARY, 2025

)

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

TORONTO ARTSCAPE INC.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

**APPROVAL AND VESTING ORDER
(Propeller Centre for the Visual Arts)**

THIS MOTION, made by msi Spergel inc. in its capacity as the Court-Appointed Receiver (in such capacity, the "**Receiver**") of certain properties of Toronto Artscape Inc. (the "**Debtor**") for, among other things, an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Propeller Centre for the Visual Arts (the "**Purchaser**") dated September 19, 2024 and appended to the Second Report of the Receiver dated December 20, 2024 (the "**Second Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement

(the "**Purchased Assets**"), was heard this day by videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion herein, the First Report of the Receiver dated April 22, 2024 and the Appendices and Confidential Appendices thereto and the Second Report and the Appendices and Confidential Appendices thereto and on hearing the submissions of the lawyers for the Receiver and other interested parties,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale 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.

2. **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 the Debtor's right, title and interest in and to the Purchased Assets 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 Steele dated January 11, 2024; (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 Land Titles Division of Toronto of a Transfer/Deed of Land in the form prescribed by the Land Titles Division of Toronto 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 (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 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.

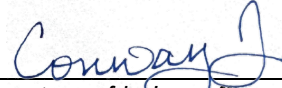
6. **THIS COURT ORDERS** that, notwithstanding:

- (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 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 Debtor and shall not be void or voidable by creditors of the 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.

7. **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 blue ink, appearing to read "Conway J.", is written above a horizontal line.

(Signature of judge, officer or registrar)

Schedule A – Form of Receiver’s Certificate

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ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

B E T W E E N:

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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Steele of the Ontario Superior Court of Justice (the "**Court**") dated January 11, 2024, msi Spergel inc. was appointed as the receiver (the "**Receiver**") of certain undertakings, property and assets of Toronto Artscape Inc. (the "**Debtor**") as detailed in the January 11, 2024 Order.

B. Pursuant to an Order of the Court dated January 7, 2025, the Court approved the agreement of purchase and sale made as of September 19, 2024 (the "**Sale Agreement**") between the Receiver and Propeller Centre for the Visual Arts (the "**Purchaser**") and provided for the vesting in the Purchaser 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 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 Article 4 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 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 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].

**msi Spergel Inc. solely in its capacity as
the Court-Appointed Receiver of the
Debtor and not in its personal or
corporate capacity.**

Per: _____

Name: Trevor B. Pringle, CFE, CIRP,
LIT

Title: Partner

Schedule B – Purchased Assets

76118-0001	UNIT 1, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO
76118-0002	UNIT 2, LEVEL 1, TORONTO STANDARD CONDOMINIUM PLAN NO. 2118 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT2549616; CITY OF TORONTO

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

1. Instrument No. AT5546921 registered October 15, 2020 is a Charge in the amount of \$2,215,000 in favour of Community Forward Fund Assistance Corp./Fond De Progress Communautaire Societe De Gestion
2. Instrument No. AT6496748 registered January 16, 2024 is an Application for a Court Order appointing MSI Spergel Inc. as receiver.

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

1. Instrument No. E4939AZ is an Application for Restrictive Covenants registered on May 14, 1996.
2. Instrument No. E362019 is Notice of a Section 37 Agreement registered on October 3, 2000.
3. Instrument No. AT1719790 is Notice of an Agreement registered on February 27, 2008.
4. Instrument No. AT1784893 is a Transfer Easement registered on May 22, 2008.
5. Instrument No. AT1929991 is a Transfer Easement registered October 22, 2008.
6. Instrument No. AT2198441 is an Application General registered on October 7, 2009, by Westside Gallery Lofts Inc.
7. Instrument No. AT2483854 is a Notice of an Agreement registered on August 23, 2010.
8. Instrument No. AT2483856 is a Postponement of Interest registered on August 23, 2010.
9. Instrument No. AT2497740 is a Notice of a Shared Facilities Agreement registered September 3, 2010.
10. Instrument No. AT2497741 is a Notice of a Shared Facilities Agreement registered September 3, 2010.
11. Instrument No. AT2497744 is an Application to Annex Restrictive Covenants pursuant to S. 119 of the Land Titles Act, registered by Toronto Artscape Inc. on September 3, 2010.
12. Instrument No. TCP2118 registered November 12, 2010, is the Standard Condominium Plan.
13. Instrument No. AT2549616 registered November 12, 2010, is the Condominium Declaration.
14. Instrument No. AT2560469 registered November 25, 2010, is Condominium By-Law No. 1.
15. Instrument No. AT2560470 registered November 25, 2010, is Condominium By-Law No. 2.
16. Instrument No. AT2560471 registered November 25, 2010, is Condominium By-Law No. 3.
17. Instrument No. AT2560472 registered November 25, 2010, is Condominium By-Law No. 4.
18. Instrument No. AT2560473 registered November 25, 2010, is Condominium By-Law No. 5.
19. Instrument No. AT2561162 registered November 26, 2010, is Notice of an Agreement.
20. Instrument No. AT2561163 registered November 26, 2010, is Notice of an Agreement.
21. Instrument No. AT3760267 registered December 5, 2014 is a Transfer, Release and Abandonment.

- 2 -

22. Instrument No. AT3760311 registered December 5, 2014, is a Transfer, Release and Abandonment.

23. Instrument No. AT5756580 registered June 3, 2021 is a Condominium By-Law.

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-and- TORONTO ARTSCAPE INC.
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PROCEEDING COMMENCED AT TORONTO

**APPROVAL AND VESTING ORDER
(Propeller Centre for the Visual Arts)**

FOGLER, RUBINOFF LLP

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