

COURT FILE NUMBER      **1901-03879**

COURT                      Court of Queen's Bench of Alberta

JUDICIAL CENTRE        Calgary

Clerk's Stamp

PLAINTIFF                **HSBC BANK CANADA**

DEFENDANTS            **GENCO HOLDINGS LTD.**

DOCUMENT              **APPLICATION (Sale Approval and Vesting Order)**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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**NOTICE TO RESPONDENT(S): SEE SERVICE LIST**

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

**Date:** November 19, 2020

**Time:** 11:00 a.m.

**Where:** Via WebEx, Details to Follow

**Before Whom:** The Honourable Justice C. Dario

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. An Order (Sale Approval and Vesting Order), substantially in the form attached as **Schedule “A”**, ordering, *inter alia*:
  - (a) the approval of the Agreement of Purchase and Sale between Jae H. Shim Professional Corporation (operating as Shim Law) (the “**Purchaser**”) and Ernst & Young Inc. in its capacity as receiver of Genco Holdings Inc. (the “**Receiver**”) dated November 5, 2020 (the “**PSA**”);
  - (b) vesting of the Sale Units in the Purchaser free and clear of all claims; and
  - (c) sealing the Confidential Supplement to the Seventh Report of the Receiver (the “**Confidential Supplement**”) dated November 10, 2020.

**Grounds for making this application:**

The grounds for making this application are set out more fully in the Seventh Report, but can be summarized as follows:

**(A) Background**

2. Any capitalized term not defined in this Application shall take the meaning ascribed to it in the Seventh Report of the Receiver dated November 10, 2020 (the “**Seventh Report**”).
3. Pursuant to an Order of the Honourable Justice P.R. Jeffrey granted on March 22, 2019 (the “**HSBC Receivership Order**”), Ernst & Young Inc. was appointed receiver, without security, of all of Genco Holdings Ltd.’s (the “**Debtor**”) right, title, and interest in and to certain real property assets (the “**634 Lands**”), as well as all of its present and after acquired personal property, of whatsoever kind and wheresoever situated, relating to, used in, on or in connection with the 634 Lands (the “**Debtor’s Property**”).
4. The HSBC Receivership Order empowers and authorizes, but does not obligate, the Receiver to, among other things, manage, operate and carry on the business of the Debtor and to take possession and control of the Debtor’s Property and any and all proceeds, receipts and disbursements arising out of or from the Debtor’s Property, and to sell, convey,

transfer, lease or assign the Debtor's Property or any part or parts thereof out of the ordinary course of business.

**(B) Receiver's Activities**

5. The Receiver's actions and activities up to the date of this Application, as described in the Seventh Report and the Confidential Supplemental Report, are lawful, proper, and consistent with its powers under the HSBC Receivership Order.
6. The Amendment to the Auction Agreement is required in order to enable the transaction contemplated in the PSA to occur.

**(C) Purchase and Sale Agreement**

7. The Receiver believes that the transaction contemplated in the PSA is the best offer available with respect to the Sale Units and will garner the greatest recovery to the creditors in the within proceedings.

**(D) Approval of Sale and Vesting of the Sale Units**

8. The Receiver believes it is appropriate for the Court to approve the PSA and grant an order vesting the Sale Units in the Purchaser.

**(E) Distribution**

9. The Receiver believes that the 634 Distribution, as set out in the Seventh Report, is appropriate for the following reasons:
  - (a) condo fee arrears and property taxes that form priority charges must be settled in full to consummate a transaction and transfer title to the 634 Units to any purchasers;
  - (b) Ritchie Bros is entitled to the commission payable to it pursuant to the Auction Agreement;
  - (c) Colliers is entitled to the commission payable to it pursuant to the PSA; and

- (d) the fees and costs owing to the Receiver and the Receiver's legal counsel have yet to be paid in these proceedings.

**(F) Sealing Order**

10. The Receiver is concerned that if the confidential information respecting the PSA is disclosed to third parties prior to the closing of the sale of the Sale Units, the disclosure could materially jeopardize the sale or, if the sale does not close, could materially jeopardize any subsequent sales process or the value that the Receiver could obtain from the sale of the Sale Units in a subsequent process. As such, the Receiver is respectfully of the view that it is appropriate that this Honourable Court grant the Receiver's request for a sealing of the Confidential Supplement.

**Material or evidence to be relied on:**

11. The Sixth Report of the Receiver dated September 16, 2020.
12. The Confidential Supplement to the Sixth Report of the Receiver dated September 16, 2020.
13. The Seventh Report of the Receiver dated November 10, 2020.
14. The Confidential Supplement to the Seventh Report of the Receiver dated November 10, 2020.
15. Affidavit of Service.
16. The other pleadings and materials filed in this Action and such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

17. Rules 1.3, 1.4, 6.3, and 13.5(2) of the *Rules of Court*.
18. Such further and other rules as counsel may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

19. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
20. *Judicature Act*, R.S.A. c. J-2.
21. Such further and other Acts and Regulations as counsel for the Receiver may advise or this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

22. Not applicable.

**How the application is proposed to be heard or considered:**

23. Via WebEx, before the Honourable Justice C. Dario in Commercial Chambers.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**SCHEDULE “A”**

**SALE APPROVAL AND VESTING ORDER**