

COURT FILE NUMBER **1901-03879**

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE Calgary

PLAINTIFF **HSBC BANK CANADA**

DEFENDANTS **GENCO HOLDINGS LTD.**

Clerk's Stamp

DOCUMENT **APPROVAL AND VESTING ORDER**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT **Fasken Martineau DuMoulin LLP**
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Attention: Travis Lysak
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File No.: 303718.3

DATE ON WHICH ORDER WAS PRONOUNCED: November 19, 2020

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF THE JUDGE WHO MADE THIS ORDER: The Honourable Justice C. Dario

UPON the application (the “**Application**”) by Ernst & Young Inc., in its capacity as the Court-appointed receiver and receiver-manager (the “**Receiver**”) of certain of the undertakings, property and assets of Genco Holdings Ltd. (the “**Debtor**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Jae H. Shim Professional Corporation (operating as Shim Law) (the “**Purchaser**”) dated November 5, 2020, vesting in the Purchaser (or its nominee) the Debtor’s right, title and interest in and to the “**Property**” as such terms defined in the Sale

Agreement; **AND UPON HAVING READ** the Receivership Order dated March 22, 2019 (the “**Receivership Order**”), the Seventh Report of the Receiver dated November 10, 2020 (the “**Seventh Report**”), the Confidential Supplement to the Seventh Report of the Receiver (the “**Confidential Supplement**”) and the Affidavit of Service; **AND UPON HEARING** the submissions of counsel for the Receiver, the Purchaser and any other counsel in attendance; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

APPROVAL OF CONDUCT

2. The actions, conduct and activities of the Receiver and the Receiver’s counsel set out in the Seventh Report and Confidential Supplement are hereby approved, including the amendment to the Auction Agreement approved by the Honourable Justice M.J, Lema of this Honourable Court on September 21, 2020.

APPROVAL OF TRANSACTION

3. 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 completion of the Transaction or conveyance of the Property to the Purchaser (or its nominee).

VESTING OF PROPERTY

4. Upon delivery of a Receiver’s certificate to the Purchaser (or its nominee) substantially in the form set out in Schedule “A” hereto (the “**Receiver’s Closing Certificate**”), all of the Debtor’s right, title and interest in and to the Property described in the Sale Agreement and listed in Schedule “B” hereto shall vest absolutely in the name of the Purchaser (or its

nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, “**Claims**”) including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order;
- (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*, (Alberta) or any other personal property registry system; and,
- (c) any liens or claims of lien under the *Builders’ Lien Act* (Alberta);

but excluding those Claims listed in Schedule “C” hereto (all of which are collectively referred to as the “**Permitted Encumbrances**”). For greater certainty, this Court orders that all Claims affecting or relating to the Property are hereby expunged, discharged and terminated as against the Property, except for the Permitted Encumbrances.

5. Upon delivery of the Receiver’s Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, “**Governmental Authorities**”) are hereby authorized, requested and directed to accept delivery of such Receiver’s Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Property subject only to Permitted Encumbrances. Without limiting the foregoing:

- (a) the Registrar of Land Titles (“**Land Titles Registrar**”) for the lands defined below shall and is hereby authorized, requested and directed to forthwith:

- (i) cancel existing Certificates of Title Nos. 161 091 513 +17, 161 091 513 +16, 161 091 513 +15, for those lands and premises municipally described as Units 16, 17, and 18, 634 – 6th Avenue S.W., Calgary, Alberta and legally described as follows:

CONDOMINIUM PLAN 1610979

UNIT 16

AND 521 UNDIVIDED ONE TEN THOUSANDTH SHARES IN
THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 1610979

UNIT 17

AND 502 UNDIVIDED ONE TEN THOUSANDTH SHARES IN
THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

CONDOMINIUM PLAN 1610979

UNIT 18

AND 486 UNDIVIDED ONE TEN THOUSANDTH SHARES IN
THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the “Lands”)

- (ii) issue new Certificates of Title for the Lands in the name of the Purchaser (or its nominee);
- (iii) transfer to the new Certificates of Title the existing instruments listed in Schedule “C” to this Order; and
- (iv) discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may be registered after

**the date of the Sale Agreement against the existing Certificate of Title
to the Lands;**

- (b) the Registrar of the Alberta Personal Property Registry shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Debtor in any of the Property which are of a kind prescribed by applicable regulations as serial-number goods.
6. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement. Presentment of this Order and the Receiver's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Property of any Claims including Encumbrances but excluding Permitted Encumbrances.
7. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Property is required for the due execution, delivery and performance by the Receiver of the Sale Agreement.
8. Upon delivery of the Receiver's Closing Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity.
9. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property (to be held in a non-interest bearing trust account by the

Receiver) shall stand in the place and stead of the Property, and from and after the delivery of the Receiver's Closing Certificate all Claims shall attach to the net proceeds from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the 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.

10. Except as expressly provided for in the Sale Agreement or by section 5 of the Alberta *Employment Standards Code*, the Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Debtor.
11. Upon completion of the Transaction, the Debtor and all persons who claim by, through or under the Debtor in respect of the Property, and all persons or entities having any Claims of any kind whatsoever in respect of the Property, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all, right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Property and to the extent that any such persons or entities remain in possession or control of any of the Property, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Property, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
12. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Property for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
13. Immediately upon closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtor.
14. The Receiver is directed to file with the Court a copy of the Receiver's Closing Certificate forthwith after delivery thereof to the Purchaser (or its nominee).

15. Notwithstanding:

- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c B-3, as amended (the “**BIA**”) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Debtor; and
- (d) the provisions of any federal or provincial statute,

the vesting of the Property in the Purchaser (or its nominee) 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 transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA 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.

16. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

DISTRIBUTION

17. The Receiver is hereby authorized and directed to make distributions to the condo corporation respecting the Sale Units, the City of Calgary, Ritchie Bros, CMN Calgary Inc., the Receiver, and the Receiver’s legal counsel pursuant to the 634 Distribution, as set out in the Seventh Report.

SEALING

18. Part 6, Division 4 of the *Alberta Rules of Court* does not apply to the Application.
19. The Confidential Supplement shall be sealed on the Court file, kept confidential and not form part of the public record, and not be available for public inspection, notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*, until further Order of this Court.
20. The Clerk of the Court shall file the Confidential Supplement, an unredacted copy of which was provided to the Court, in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS THE CONFIDENTIAL SUPPLEMENT TO THE SEVENTH REPORT OF THE RECEIVER DATED NOVEMBER 10, 2020 FILED BY ERNST & YOUNG INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND RECEIVER-MANAGER OF CERTAIN OF THE UNDERTAKING, PROPERTY AND ASSETS OF GENCO HOLDINGS LTD.; AND THE CONFIDENTIAL SUPPLEMENT TO THE SEVENTH REPORT OF THE RECEIVER DATED NOVEMBER 10, 2020 IS SEALED UNTIL THE FILING OF THE RECEIVER'S CLOSING CERTIFICATE EVIDENCING THE CLOSING OF THE TRANSACTION PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE MADAM JUSTICE C. DARIO ON NOVEMBER 19, 2020.

21. Leave is hereby granted to any person, entity or party affected by this Order to apply to this Court for a further Order vacating, substituting, modifying or varying the terms of this Order, with such application to be brought on notice to the Receiver and any other affected party in accordance with the *Alberta Rules of Court*.

MISCELLANEOUS MATTERS

22. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, 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 order and to provide such assistance to the Receiver, as an officer of the 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.
23. Service of this Order shall be deemed good and sufficient by serving the same on:
- (a) the persons listed on the service list created in these proceedings;
 - (b) any other person served with notice of the application for this Order;
 - (c) any other parties attending or represented at the application for this Order; and
 - (d) posting a copy of this Order on the Receiver's website.
24. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

J.C.Q.B.A.

Schedule "A"

Form of Receiver's Certificate

COURT FILE NUMBER **1901-03879**

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE Calgary

PLAINTIFF **HSBC BANK CANADA**

DEFENDANTS **GENCO HOLDINGS LTD.**

Clerk's Stamp

DOCUMENT **RECEIVER'S CERTIFICATE**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
3400 First Canadian Centre
350 – 7 Avenue SW
Calgary, Alberta T2P 3N9

Attention: Travis Lysak
Tel: (403) 261- 5350 / (587) 233 4107
Facsimile: (403) 261- 5351
File No.: 303718.3

RECITALS

- A. Pursuant to an Order of the Honourable Justice P.R. Jeffrey of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated March 22, 2019, Ernst & Young Inc. was appointed receiver and receiver-manager (the "**Receiver**") of certain of the undertaking, property and assets of Genco Holdings Ltd. (the "**Debtor**").
- B. Pursuant to an Order of the Court dated November 19, 2020, the Court approved the agreement of purchase and sale made as of November 5, 2020 (the "**Sale Agreement**") between the Receiver and Jae H. Shim Professional Corporation (operating as Shim Law) (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Property, which vesting is to be effective with respect to the

Property 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 Property; (ii) that the conditions to Closing as set out in Sections 12.1, 12.2, and 12.3 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, capitalized terms have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Property payable on the Closing Date pursuant to the Sale Agreement.
2. The conditions to Closing as set out in Sections 12, 13 and 14 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee).
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at [●] on [●].

ERNST & YOUNG INC., in its capacity as court-appointed receiver and receiver-manager of **GENCO HOLDINGS LTD**, and not in its personal capacity

By: _____

Name:

Title:

Schedule "B"

Property

The Property consists of the lands described as follows (the "**Lands**"):

Legal Description
CONDOMINIUM PLAN 1610979 UNIT 16 AND 521 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS
CONDOMINIUM PLAN 1610979 UNIT 17 AND 502 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS
CONDOMINIUM PLAN 1610979 UNIT 18 AND 486 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS

Schedule "C"

Permitted Encumbrances

CERTIFICATE(S) OF TITLE REGISTERED AGAINST	LEGAL DESCRIPTION OF LANDS	REGISTRATION NO.	PARTICULARS	DATE of REGISTRATION (D/M/Y)
161 091 513 +16	CONDOMINIUM PLAN 1610979	3391JT	EASEMENT "E. 6 IN. OF LOT 37 SUBJECT TO AND EXTENDED BY OVER W. 6 INS. OF LOT 36"	05/04/1967
	UNIT 16			
	AND 521 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY	091 003 755	CAVEAT RE: EASEMENT	06/01/2009
	EXCEPTING THEREOUT ALL MINES AND MINERALS	141 057 571	CAVEAT RE: DEVELOPMENT AGREEMENT PURSUANT TO MUNICIPAL GOVERNMENT ACT	06/03/2014
161 091 513 +17	CONDOMINIUM PLAN 1610979	3391JT	EASEMENT "E. 6 IN. OF LOT 37 SUBJECT TO AND EXTENDED BY OVER W. 6 INS. OF LOT 36"	05/04/1967
	UNIT 17			
	AND 502 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY	091 003 755	CAVEAT RE: EASEMENT	06/01/2009
	EXCEPTING THEREOUT ALL MINES AND MINERALS	141 057 571	CAVEAT RE: DEVELOPMENT AGREEMENT PURSUANT TO MUNICIPAL GOVERNMENT ACT	06/03/2014

161 091 513 +18	CONDOMINIUM PLAN 1610979 UNIT 18 AND 486 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY	3391JT	EASEMENT “E. 6 IN. OF LOT 37 SUBJECT TO AND EXTENDED BY OVER W. 6 INS. OF LOT 36”	05/04/1967
		091 003 755	CAVEAT RE: EASEMENT	06/01/2009
	EXCEPTING THEREOUT ALL MINES AND MINERALS	141 057 571	CAVEAT RE: DEVELOPMENT AGREEMENT PURSUANT TO MUNICIPAL GOVERNMENT ACT	06/03/2014