

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

THE HONOURABLE) WENDESDAY , THE 9TH
JUSTICE DUNPHY) DAY OF JUNE, 2021

B E T W E E N:

DODICK LANDAU INC.

Applicant

and

FRANK ZUCCARO, 863704 ONTARIO LIMITED, METROPOLITAN ICE CREAM INC.
AND ORACCUZ HOLDING LTD.

Respondents

**APPLICATION UNDER SUBSECTION 249 and 250(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND RULES 14.05(2) AND (3)(g)
AND 41 OF THE RULES OF CIVIL PROCEDURE, R.R.O. 1990**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Dodick Landau Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Frank Zuccaro, 863704 Ontario Limited, Metropolitan Ice Cream Inc. and Oraccuz Holding Ltd. (the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by an Agreement of Purchase and Sale (the "Sale Agreement") between the Receiver and Ashiana Capital Corp. (the "Purchaser") dated March 5, 2021 and amended March 29, 2021 and June 7, 2021 and appended to the Report of the Receiver dated May 18, 2021 (the "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 June 7, 2021 at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, and on the consent of the Respondents and of Maria Zuccaro, and the Added Respondents to the Family Court Proceedings, Giuseppe Zuccaro, Vito Antonio Zuccaro and Filomena Zuccaro.

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 Douglas dated November 17, 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; (iii) any claims of Maria Zuccaro, Giuseppe Zuccaro, Vito Antonio Zuccaro, and Filomena Zuccaro arising in proceedings in the Newmarket Superior Court of Justice in Court File No. FC-19-0058934-0000, including without limitation those based on an unequal distribution of matrimonial assets, disputed ownership interests and or claims based on principles of constructive trust or resulting trust; and (iv) 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 No. 66 of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform 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 of and instead 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 ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

8. 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.



* revision to June 7
order to correct
spelling of corporate
name.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-21-00661928-00CL

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

B E T W E E N:

DODICK LANDAU INC.

Applicant

and

FRANK ZUCCARO, 863704 ONTARIO LIMITED, METROPOLITAN ICE CREAM INC.
AND ORACCUZ HOLDING LTD.

Respondents

**APPLICATION UNDER SUBSECTION 249 and 250(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND RULES 14.05(2) AND (3)(g)
AND 41 OF THE RULES OF CIVIL PROCEDURE, R.R.O. 1990**

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice P.A. Douglas of the Ontario Superior Court of Justice (the "Court") dated November 17, 2020, Dodick Landau Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Frank Zuccaro, 863704 Ontario Limited, Metropolitan Ice Cream Inc. and Oraccuz Holding Ltd. (the "Debtor").

B. Pursuant to an Order of the Court dated June , 2021, the Court approved the agreement of purchase and sale made as of March 5, 2021 and amended March 29, 2021 and June 7, 2021 (the "Sale Agreement") between the Receiver and Ashiana Capital Corp. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor’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 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].

**DODICK LANDAU INC., in its capacity as
Receiver of the undertaking, property and
assets of Frank Zuccaro, 863704 Ontario
Limited, Metropolitan Ice Cream Inc. and
Oraccuz Holding Ltd., and not in its personal
capacity**

Per: _____
Name: Rahn Dodick
Title: President

Schedule B – Purchased Assets

PIN 10338-0104 (LT)

LT 4 PL 4325 North York; TORONTO (N YORK), CITY OF TORONTO

And municipally known as 76 Densley Avenue, Toronto, Ontario

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

<u>INSTRUMENT</u>	<u>DATE</u>	<u>INSTRUMENT TYPE</u>	<u>IN FAVOUR OF</u>
AT5036925	2018/12/18	CHARGE	EQUITABLE BANK
AT5036926	2018/12/18	ASSIGNMENT OF RENTS	EQUITABLE BANK
AT5500851	2020/08/21	APL (GENERAL)-CPL	MARIA ZUCCARO
AT5575277	2020/11/18	APL COURT ORDER	DODICK LANDAU INC.
AT5579428	2020/11/24	POSTPONEMENT	DODICK LANDAU INC.

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

(unaffected by the Vesting Order)

<u>INSTRUMENT</u>	<u>DATE</u>	<u>INSTRUMENT TYPE</u>	<u>IN FAVOUR OF</u>
AT5149081	2019/05/31	NOTICE OF LEASE	DISTRICT VENTURES KITCHEN

DODICK LANDAU INC.
Applicant

and

FRANK ZUCCARO. et al.
Respondents

Court File No.

CV-21-00661928-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
APPLICATION UNDER SUBSECTION 249 and 250(1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.
1985, c. B-3, AS AMENDED AND RULES 14.05(2) AND
(3)(g) AND 41 OF THE RULES OF CIVIL PROCEDURE,
R.R.O. 1990

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

GARFINKLE BIDERMAN LLP

Barristers & Solicitors
1 Adelaide Street East, Suite 801
Toronto, Ontario
M5C 2V9

Wendy Greenspoon-Soer LSO#: 34698L
Tel: 416-869-1234
Fax: 416-869-0547
Email: wgreenspoon@garfinkle.com

Lawyers for the Applicant,
DODICK LANDAU INC.

File Number: 12574-001