

ONTARIO  
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE ESTATE OF PAUL ZIGOMANIS, deceased

THE HONOURABLE ) WEDNESDAY, THE 14TH DAY  
JUSTICE CONWAY ) OF OCTOBER, 2015

GAIL MacDONALD

Applicant

- and -

VIOLET COOPER

Respondent

APPLICATION UNDER sections 28 and 29 of the *Estates Act*, R.S.O. 1990, c. E. 21

ORDER

THIS APPLICATION, made by the Applicant for an order appointing an estate trustee during litigation was heard this day at 330 University Avenue.

ON READING the Application Record of Gail MacDonald, including the September 9, 2015 affidavit of Gail MacDonald, the consents of Gail MacDonald and Violet Cooper, and the consent of Jonathan Cooperman of A. Farber & Partners Inc., and hearing the submissions of the lawyer for Gail MacDonald,

1. THIS COURT ORDERS that Jonathan Cooperman of A. Farber & Partners Inc. is appointed as estate trustee during litigation (the "Trustee"), without security, of all property and assets of the estate, including all proceeds thereof (the "Property"), of Paul Zigomanis (the "Deceased"), (collectively, the "Estate").



2. **THIS COURT ORDERS** that all of the Property shall be vested in the Trustee from the date of this order.
3. **THIS COURT ORDERS** that the Trustee be authorized to exercise those powers given by law to an estate trustee during litigation, including such powers under the *Estates Act*, R.S.O. 1990 c. E.21 as amended, but for the distribution of the assets of the Estate without further court order.
4. **THIS COURT ORDERS** that a Certificate of Appointment of Estate Trustee during Litigation be issued to the Trustee, subject only to the filing of the necessary supporting application, which application is to be expedited by the court office.
5. **THIS COURT ORDERS** that any requirement that the Trustee post a bond as security be and is hereby waived.
6. **THIS COURT ORDERS** that the Trustee shall have leave to move for further directions as may appear advisable or necessary.
7. **THIS COURT ORDERS** that subject to the terms of this Order, the Trustee shall not distribute the assets of the Estate or any Property, without further court order.

#### **TRUSTEE'S POWERS**

8. **THIS COURT ORDERS** that the Trustee is hereby empowered and authorized, but not obligated, to act at once in respect of the Deceased, the Estate and the Property and, without in any way limiting the generality of the foregoing, the Trustee is hereby expressly empowered and authorized to do any of the following where the Trustee considers it necessary or desirable:

- (a) to take possession of and exercise control over the Estate and any and all proceeds, receipts and disbursements arising out of or from the Estate;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to conduct an investigation with respect to the Deceased, the Estate and the Property, including with respect to the Deceased's creditors, if any;
- (d) to manage, operate, and carry on the business of the Deceased or the Estate, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Deceased or the Estate;
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, legal counsel, and such other persons from time to time and on whatever basis, including on a temporary basis, at their standard rates, to assist with the exercise of the Trustee's powers and duties, including without limitation those conferred by this Order;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Deceased or the Estate and to exercise all remedies of the Deceased or the Estate

in collecting such monies, including, without limitation, to enforce any security held by the Deceased or the Estate;

- (g) to settle, extend or compromise any indebtedness owing to the Deceased or the Estate;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Trustee's name or in the name and on behalf of the Deceased or the Estate, for any purposes pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Deceased, the Estate or the Trustee, and to settle or compromise any such proceedings;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect to the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Trustee in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding CDN \$50,000, provided that the aggregate consideration for all such transactions does not exceed CDN \$250,000; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Trustee deems appropriate on all matters relating to the Estate, and to share information, subject to such terms as to confidentiality as the Trustee deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Trustee, in the name of the Deceased or the Estate;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Deceased or the Estate may have; and

(q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Trustee takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Deceased or the Estate, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND COOPERATION TO THE TRUSTEE**

9. **THIS COURT ORDERS** that all of the Deceased's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on his instructions or behalf, and all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Trustee of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the property to the Trustee, and shall deliver all such Property to the Trustee upon the Trustee's request. The Trustee shall have the power to summons any such Persons, reasonably expected to have any knowledge with respect to the Deceased, the Estate or the Property, to answer questions under oath.
  
10. **THIS COURT ORDERS** that all Persons shall forthwith advise the Trustee of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Deceased or the Estate, and any computer programs, computer tapes,

computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's care, possession or control, and shall provide to the Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that, with the exception of the terms of paragraph 11 below, nothing in this paragraph 10 or in paragraph 12 of this Order shall require the delivery of Records, or the granting of access of Records, which may not be disclosed or provided to the Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

11. **THIS COURT ORDERS** that solicitor-client privilege and any duty of confidentiality be waived in the same manner as if the Deceased were alive so that the Trustee can compel production of all solicitor and/or paralegal records, notes, and files relating to the Deceased from any lawyer or paralegal, and any other person, entity or institution in possession of such documents.
  
12. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Trustee for the purpose of allowing the Trustee to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written

consent of the Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Trustee with all such assistance in gaining immediate access to the information in the Records as the Trustee may in its discretion require including providing the Trustee with instructions on the use of any computer or other system and providing the Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE TRUSTEE**

13. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Trustee except with the written consent of the Trustee or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DECEASED, THE ESTATE OR THE PROPERTY**

14. **THIS COURT ORDERS** that no Proceeding against or in respect of the Deceased, the Estate or the Property shall be commenced or continued except with the written consent of the Trustee or with leave of this Court and any and all Proceedings currently under way against or in respect of the Deceased, the Estate or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that all rights and remedies against the Deceased or the Estate, the Trustee, or affecting the Property, are hereby stayed and suspended except with the written consent of the Trustee or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), and further



provided that nothing in this paragraph shall (i) empower the Trustee or the Estate to carry on any business which the Deceased or the Estate is not lawfully entitled to carry on, (ii) exempt the Trustee or the Estate from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE TRUSTEE**

16. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Deceased or the Estate, without written consent of the Trustee or leave of this Court.

#### **TRUSTEE TO HOLD FUNDS**

17. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Trustee from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Trustee (the "**Post Appointment Accounts**") and the monies standing to the credit of such Post Appointment Accounts from time to time, net of any disbursements provided for herein, shall be held by the Trustee to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

18. **THIS COURT ORDERS** that all employees of the Deceased or the Estate shall remain the employees of the Deceased or the Estate until such time as the Trustee, on the Deceased's or the Estate's behalf, may terminate the employment of such employees. The Trustee shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Trustee may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

19. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Trustee shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Trustee, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Deceased or the Estate, and shall return all

other personal information to the Trustee, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

20. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE TRUSTEE'S LIABILITY**

21. **THIS COURT ORDERS** that the Trustee shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations

under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Trustee by section 14.06 of the BIA or by any other applicable legislation.

22. **THIS COURT ORDERS** that the Trustee shall have no personal liability for any actions or omissions of the Deceased.

### **TRUSTEE'S ACCOUNTS**

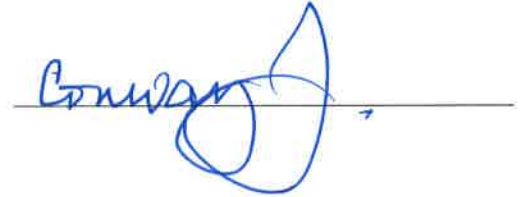
23. **THIS COURT ORDERS** that the Trustee and counsel to the Trustee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Trustee and counsel to the Trustee shall be entitled to and are hereby granted a charge (the "**Trustee's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Trustee's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.
24. **THIS COURT ORDERS** that the Trustee and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
25. **THIS COURT ORDERS** that prior to the passing of its accounts, the Trustee shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Trustee or its counsel, and such amounts shall constitute


advances against its remuneration and disbursements when and as approved by this Court.

**GENERAL**

26. **THIS COURT ORDERS** that the Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Trustee from acting as a trustee in bankruptcy of the Deceased or the Estate, and that the Trustee notwithstanding section 49(1) of the BIA shall be permitted to assign the Estate into bankruptcy without leave of the court.
28. **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 Trustee 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 Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.
29. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



SUPERIOR COURT OF JUSTICE  
**ENTERED**  
OCT 14 2015  
COUR SUPÉRIEURE DE JUSTICE  
**ENTRÉ** 

**IN THE MATTER OF THE ESTATE OF PAUL ZIGOMANIS, deceased**

Court File No: 05-145/15

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**ORDER**

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