

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE  
JUSTICE PATTILLO



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FRIDAY, THE 27TH  
DAY OF SEPTEMBER, 2019

BETWEEN:

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 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**

THIS MOTION, made by the Applicant for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale dated September 25, 2019 (the “**Sale Agreement**”) between Hilco Industrial Acquisitions Canada ULC (the “**Purchaser**”) and A. Farber and Partners Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of B & W Heat Treating Canada, ULC (the “**Debtor**”), and appended as Exhibit “H” to the Affidavit of Eric Mannix, sworn September 26, 2019 (“**Mannix Affidavit**”) 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 at 330 University Avenue, Toronto, Ontario.

ON READING the Mannix Affidavit and on hearing the submissions of counsel for the Debtor, the Applicant, the Receiver, and counsel for the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Jeffrey Levine sworn September 26, 2019, filed:

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 and the Purchaser 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 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 Pattillo dated September 27, 2019; (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 B hereto (all of which are collectively referred to as the “**Encumbrances**”) 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 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.

4. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

5. 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.

6. 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.

**SEALING OF CONFIDENTIAL MATERIALS**

7. THIS COURT ORDERS that the Record of Confidential Exhibits containing the confidential exhibits referred to in the Affidavit of Eric Mannix sworn September 26, 2019 is sealed until the completion the transaction contemplated by the Sale Agreement, or until further order of this Court.



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ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

SEP 27 2019

PER / PAR: *UM*



**Schedule A – Form of Receiver’s Certificate**

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

CERBERUS BUSINESS FINANCIAL, LLC

Applicant

- and -

B & W HEAT TREATING CANADA, ULC

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
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**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Pattillo of the Ontario Superior Court of Justice (the “**Court**”) dated September 27, 2019, A. Farber and Partners Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of B & W Heat Treating Canada, ULC (the “**Debtor**”).

B. Pursuant to an Order of the Court dated September 27, 2019, the Court approved the agreement of purchase and sale made as of September 25, 2019 (the “**Sale Agreement**”) between the Receiver and Hilco Industrial Acquisitions Canada ULC (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 section 5 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 section 5 of 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].

**A. Farber and Partners Inc., in its capacity as Receiver of the undertaking, property and assets of B & W Heat Treating Canada, ULC and not in its personal capacity**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule B – Claims to be Released, Discharged and Expunged from Purchased Assets**

<b>Secured Party</b>	<b>File No.</b>
Cerberus Business Finance, LLC	681898986

CERBERUS BUSINESS FINANCIAL, LLC  
Applicant

and

B & W HEAT TREATING CANADA, ULC  
Respondent

Court File No.:

**ONTARIO  
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Proceeding commenced at Toronto

**SALE APPROVAL AND VESTING ORDER**

**McMillan LLP**

Brookfield Place  
181 Bay St, Suite 4400  
Toronto, ON M5J 2T3

**Jeffrey Levine** LSO#: 55582H

jeffrey.levine@mcmillan.ca

Tel: (416) 865-7791 / Fax: (416) 865-7048

**Mitch Kocerginski** LSO#: 67818B

mitch.kocerginski@mcmillan.ca

Tel: (416) 865-7262 / Fax: (416) 865-7048

Lawyers for the Applicant