

District of Ontario
Division No. 9 - Toronto
Court File No.: 31-3051650
Estate File No.: 31-3051650

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE) THURSDAY, THE 2nd
JUSTICE CAVANAGH) DAY OF MAY, 2024

**IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C., 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF A NOTICE OF INTENTION TO
MAKE A PROPOSAL OF ORGANIC GARAGE (CANADA)
LTD., 2412383 ONTARIO INC., 2347018 ONTARIO INC.,
2507158 ONTARIO INC., AND 2581751 ONTARIO INC.**

APPROVAL AND VESTING ORDER

THIS MOTION, made by KPMG Inc. (“**KPMG**”), in its capacity as the proposal trustee (in such capacity, the “**Proposal Trustee**”) of Organic Garage (Canada) Ltd. (“**Organic Garage**”), 2412383 Ontario Inc., 2347018 Ontario Inc., 2507158 Ontario Inc. and 2581751 Ontario Inc. (collectively, the “**Companies**”), for an Order, *inter alia*, approving the sale transaction (the “**Transaction**”) that was selected by the Proposal Trustee under the sale and solicitation process (the “**SISP**”) granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on March 14, 2024 (the “**Sale Process Order**”), and as contemplated by an asset purchase agreement between Organic Garage and 2581751 Ontario Inc., as vendors (together, the “**Vendors**”), and

1000858769 Ontario Inc., as purchaser (the “**Purchaser**”), dated April 16, 2024, as amended by the First Amendment to the Asset Purchase Agreement dated April 29, 2024 (collectively the “**Sale Agreement**”), an unredacted copy of which is attached as Confidential Appendix “3” to the third report of the Proposal Trustee dated April 23, 2024 (the “**Third Report**”) and Appendix “B” to the supplementary third report of the Proposal Trustee dated May 1, 2024 respectively (the “**Supplemental Third Report**”), and vesting in the Purchaser the Vendors’ right, title and interest in and to the assets as described in the Sale Agreement (the “**Purchased Assets**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Proposal Trustee, including the Third Report and appendices thereto, the Supplemental Motion Record of the Proposal Trustee, including the Supplemental Third Report and appendices thereto, and on hearing the submissions of counsel for the Vendors and counsel for the Proposal Trustee and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service, filed,

1. **THIS COURT ORDERS** that all capitalized terms in this Order shall have the meaning as set out in the Sale Agreement, unless otherwise expressly defined herein.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction selected from the SISP is hereby approved, and the execution of the Sale Agreement by the Vendors is hereby authorized and approved, with such minor amendments as the Vendors and the Proposal Trustee may deem necessary. The Vendors and the Proposal Trustee are 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, including without limitation, the Assignment and Assumption Agreements.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Proposal Trustee's Certificate**"), all of the Vendors' 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 certificates of pending litigation and any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, writs, 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 Steele dated March 14, 2024; and (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 (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.

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 and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee'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 Proposal Trustee to file with the Court a copy of the Proposal Trustee'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 Companies and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Companies,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on the Proposal Trustee and any other licensed insolvency trustee in bankruptcy that may be appointed in respect of the Companies and shall not be void or voidable by creditors of the Companies, 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 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 Proposal 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 Proposal Trustee, as an officer

of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order, and this Order is enforceable without the need for entry and filing.

Schedule “A” – Form of Proposal Trustee’s Certificate

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PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

- I. Pursuant to a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) each filed by Organic Garage (Canada) Ltd. (“**Organic Garage**”), 2412383 Ontario Inc., 2347018 Ontario Inc., 2507158 Ontario Inc. and 2581751 Ontario Inc. (collectively, the “**Companies**”) on March 5, 2024, KPMG Inc. was named as the Companies’ proposal trustee (in such capacity, the “**Proposal Trustee**”).

- II. Pursuant to an Order of The Honourable Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made March 14, 2024 (the “**Sale Process Order**”), the Court

approved, among other things, a sale and investment solicitation process with respect to the assets and/or business of the Companies to be conducted by the Proposal Trustee.

III. Pursuant to an Order of the Court dated May 2, 2024, the Court approved the asset purchase agreement between Organic Garage and 2581751 Ontario Inc. as vendors (together, the “**Vendors**”), and 1000858769 Ontario Inc. as purchaser (the “**Purchaser**”), dated April 16, 2024, as amended by the First Amendment to the Asset Purchase Agreement dated April 29, 2024 (collectively the “**Sale Agreement**”), and provided for the vesting in the Purchaser all the Vendors’ 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 Proposal Trustee 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 Vendors and the Purchaser; and (iii) that the Transaction has been completed to the satisfaction of the Proposal Trustee.

IV. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Proposal Trustee 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 Vendors and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Proposal Trustee; and

4. This Proposal Trustee's Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

KPMG INC., solely in its capacity as the proposal trustee of Organic Garage (Canada) Ltd., 2412383 Ontario Inc., 2347018 Ontario Inc., 2507158 Ontario Inc. and 2581751 Ontario Inc., and not in its personal capacity or corporate capacity

Per: _____

Name:

Title:

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Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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