

Court File No. CV-18-603360-00CL

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

**IN THE MATTER OF THE WINDING UP OF
OXFORD ADVANCED IMAGING INC.**

**APPLICATION UNDER SECTION 207 OF THE
BUSINESS CORPORATIONS ACT, R.S.O. 1990, c. B.16**

**THIRD REPORT OF KPMG INC. in its capacity as
SALES OFFICER OF OXFORD ADVANCED IMAGING INC.**

June 12, 2019

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I. INTRODUCTION AND SUMMARY OF PROCEEDINGS

1. The Toronto-Dominion Bank (“**TD Bank**”) filed an application (the “**Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for interim relief pursuant to sections 207 and 209 of the *Business Corporations Act*, (Ontario) for among other things, an order for the sale of the assets and business of Oxford Advanced Imaging Inc. (“**OAI**”) and for the appointment of KPMG Inc. (“**KPMG**”) as sales officer of OAI (the “**Sales Officer**”).
2. The Application was heard on August 29, 2018 and KPMG was appointed Sales Officer pursuant to an Order (the “**Appointment Order**”) which, among other things, authorized and directed the Sales Officer carry out a process (the “**Sales Process**”) for the sale of the assets and business of OAI (the “**Property**”).
3. The Property consisted of all the assets, undertakings and properties acquired for, or used in relation to, OAI’s diagnostic imaging clinics. The operations of OAI consisted of two clinics, one is located in Mississauga, Ontario and the other one is located in Ajax, Ontario.
4. The Sales Officer issued its first report to the Court on November 12, 2018 (the “**First Report**”). A copy of the First Report (without appendices) is attached as **Appendix “A”** herein. As detailed in the First Report, the Sales Officer brought a motion returnable on November 20, 2018 seeking an Approval and Vesting Order (the “**Approval and Vesting Order**”) approving: (a) the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement between the Sales Officer and 2659428 Ontario Inc. (the “**Purchaser**”) dated October 25, 2018 (the “**Asset Purchase Agreement**”), as amended by an amending agreement dated November 19, 2018 (the “**First Amendment**”) and a second amending agreement dated April 23, 2019 (the “**Second Amendment**”, and together with the Purchase Agreement and First Amendment, the “**Amended Asset Purchase Agreement**”) and vesting in the Purchaser, OAI’s right, title and interest in and to the assets described in the Amended Asset Purchase Agreement; and (b) the Sales Officer’s activities as set forth in the First Report. A copy of the Amended Asset Purchase Agreement is attached as **Appendix “B”** herein.

5. On November 20, 2018, the Court granted the Approval and Vesting Order. A copy of the Approval and Vesting Order is attached as **Appendix “C”** herein.
6. The Sales Officer issued its second report to the Court on April 26, 2019 (the “**Second Report**”). A copy of the Second Report (without appendices) is attached as **Appendix “D”** herein. As detailed in the Second Report, the Sales Officer brought a motion returnable on May 2, 2019 seeking an Order approving: (a) the Second Amendment, and (b) approving the activities of the Sales Officer as set out in the Second Report and approving the fees and disbursements of the Sales Officer and the Sales Officer’s legal counsel, Dentons Canada LLP (“**Dentons**”), for the period up to January 30, 2019.
7. Capitalized terms not defined herein shall have the meanings set out in the Appointment Order.

II. PURPOSE OF THIS THIRD REPORT

8. The purpose of the Sales Officer’s third report dated June 12, 2019 (the “**Third Report**”) is to:
 - (a) Update the Court with respect to the closing of the Transaction;
 - (b) Provide the Court with the necessary information to support an Order (the “**First Distribution Order**”) authorizing and approving the Sales Officer to make a distribution from the Sales Proceeds (as defined herein) as follows:
 - (i) A distribution by the Sales Officer to TD Bank to repay TD Bank in full and final satisfaction of the indebtedness owing by OAI to TD Bank (the “**TD Bank Distribution**”); and
 - (ii) A distribution by the Sales Officer to ECN Financial Inc. (“**ECN**”) to repay ECN in full and final satisfaction of the indebtedness owing by OAI to ECN (the “**ECN Distribution**”);
 - (c) Provide the Court with details regarding the fees and disbursements incurred by KPMG Corporate Finance Inc. (“**KPMG CF**”) and Blake, Cassels & Graydon LLP

(“**Blakes**”) prior to the granting of the Appointment Order in relation to the previous solicitation process for the sale of the Property, which fees are secured by the Advisory Charge; and

- (d) Provide the Court with the necessary information to support an Order approving the activities of the Sales Officer as set out in the Third Report and approving the fees of the Sales Officer and Dentons for the period of February 1, 2019 to May 31, 2019.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
 10. The information contained in this Third Report has been obtained from the books and records and other information of OAI. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Sales Officer, and the Sales Officer does not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Sales Officer in preparing this Third Report.
 11. Future oriented financial information reported or relied on in preparing this Third Report is based on OAI management’s assumptions regarding future events; actual results may vary from forecast and such variations may be material.

III. UPDATE ON THE CLOSING OF THE TRANSACTION

12. Since the date of the Second Report, the Sales Officer worked diligently with the Purchaser, the Ministry of Health and Long-Term Care (the “**MoH**”), and OAI to close the Transaction. Specifically, the Sales Officer: (a) worked with the MoH and the Purchaser through the transfer approval process in respect of OAI’s Independent Health Facility Licences (the “**IHF Licenses**”) and (b) worked with the Purchaser and OAI through numerous pre-closing and transition matters. The Transaction closed on May 30, 2019.

License Transfer Approval Process

13. As discussed in the Second Report, the license transfer approval process was subject to a number of conditions including the MoH and the Purchaser entering into a new funding agreement (the “**New Funding Agreement**”) and termination of OAI’s existing funding agreement with the MoH (the “**Old Funding Agreement**”). As of the date of the Second Report, the Sales Officer had been advised by the Purchaser that the Purchaser and MoH had settled and finalized the form of the New Funding Agreement.
14. Following the issuance of the Second Report, the Sales Officer and its counsel continued to hold discussions with the MoH and the Purchaser regarding the status of the New Funding Agreement and the license transfer process. On May 14, 2019, the Sales Officer received a letter from the MoH advising that the Old Funding Agreement would be terminated on May 30, 2019 (the target closing date), subject to the Sales Officer waiving the 90-day termination notice period contained in the Old Funding Agreement (the “**Notice Period**”).
15. The Sales Officer provided the MoH with the written waiver with respect to the Notice Period on or about May 27, 2019.
16. On May 27, 2019, the MoH advised the Sales Officer that all of the conditions associated with the license transfer process had been satisfied and that the license transfer would be completed and effective for May 31, 2019.
17. In the same correspondence, the MoH further advised that a financial reconciliation of funds paid to OAI in respect to the IHF Licences was being undertaken by the MoH and would be provided to the Sales Officer following the closing of the Transaction (the “**OAI Funding Reconciliation**”).

Closing and Transition Matters

18. The Sales Officer and its counsel also continued working with the Purchaser and its counsel through the various pre-closing and transition matters, including the assignments of leases and contracts and the transfer of certain patient data that was required to occur prior to

closing pursuant to the IHF regulations (the “**Data Migration**”). The Sales Officer and its counsel completed all of the required pre-closing and closing matters in order to close the Transaction on May 30, 2019 (the “**Closing Date**”).

19. The Sales Officer received the balance of the purchase price on the Closing Date. In summary, the Sales Officer received \$26,250,000 from the Purchaser for the purchase of the Property and \$18,108.05 representing certain security deposits previously paid by OAI in respect of commercial leases that were reimbursed by the Purchaser, in accordance with the Amended Asset Purchase Agreement (collectively, the “**Sale Proceeds**”). On May 31, 2019, the Sales Officer filed the Sales Officer’s certificate with the Court.
20. Currently, the Sales Officer continues to work with the Purchaser and OAI on certain post-closing matters, including the continued Data Migration and the reconciliation of working capital adjustments to the purchase price as provided for in the Amended Asset Purchase Agreement (the “**Working Capital Adjustment**”). The Sales Officer notes that the purchase price (and as a result, the Sale Proceeds) held by the Sales Officer will adjust based on the outcome of the Working Capital Adjustment.

IV. SECURITY OPINIONS

TD Bank

21. The Sales Officer obtained a security opinion from Dentons with respect to the TD Bank security documentation (the “**TD Bank Security Opinion**”) and, subject to the customary qualifications and assumptions contained therein, the TD Bank Security Opinion opines that: (a) the security held by TD Bank is valid and legally enforceable against OAI, and (b) TD Bank has a perfected security interest in the Property.
22. Subject to the customary assumptions and qualifications contained in the TD Bank Security Opinion, Dentons has opined that the TD Bank security documents:
 - (a) constitute legal, valid and binding security interests in favour of TD Bank in the Property;

- (b) are sufficient to secure the payment and performance of the obligations secured thereby; and
- (c) are properly registered and perfected in the applicable jurisdiction.

ECN

23. The Sales Officer obtained a security opinion from its counsel with respect to the ECN security documentation (the "**ECN Security Opinion**") and, subject to the customary qualifications and assumptions contained therein, the ECN Security Opinion opines that: (i) the security held by ECN is valid and legally enforceable against OAI, and (ii) ECN has a perfected security interest in the Property.
24. Subject to the customary assumptions and qualifications contained in the ECN Security Opinion, Sales Officer's counsel has opined that the ECN security documents:
- (a) constitute legal, valid and binding security interests in favour of ECN in the Property;
 - (b) are sufficient to secure the payment and performance of the obligations secured thereby; and
 - (c) are properly registered and perfected in the applicable jurisdiction.

V. DISTRIBUTION TO SECURED CREDITORS

25. Pursuant to paragraphs 3(f) and 23 of the Appointment Order, the Sales Officer is seeking the First Distribution Order in order to authorize and approve the TD Bank Distribution and the ECN Distribution.
26. According to a payout statement received from TD Bank, the amount of \$9,416,220.22 is due and owing to TD Bank as of June 10, 2019, together with accruing interest and expenses (the "**TD Bank Indebtedness**"). The Sales Officer notes that a further advance to OAI from TD Bank in the amount of approximately \$71,000 will occur on or about June

14, 2019 in order to fund a final payroll to employees of OAI following the closing of the Transaction. A copy of the TD Bank payout statement is attached as **Appendix “E”** herein.

27. According to a payout statement received from ECN, the amount of \$11,268,000.63 is due and owing to ECN as of June 10, 2019, together with accruing interest and expenses (the **“ECN Indebtedness”**). A copy of the ECN payout statement is attached as **Appendix “F”** herein.

28. There are sufficient Sale Proceeds to fund the TD Bank Distribution and ECN Distribution. The proposed distributions will further limit interest charges accruing on the TD Bank Indebtedness and the ECN Indebtedness.

VI. FEES SUBJECT TO THE ADVISORY CHARGE AND RESIDUAL SALE PROCEEDS

29. Pursuant to paragraph 27 of the Appointment Order, KPMG CF and Blakes are entitled to an Advisory Charge as security for such fees and disbursements relating to the solicitation process for the sale of Property incurred by OAI prior to the making of the Appointment Order. The Advisory Charge forms a third charge upon the Property and the Sale Proceeds thereof, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, but subsequent and subordinate to the Sale Process Borrowings Charge, the Sales Officer’s Charge and the security interests of TD Bank and ECN.

30. The fees and disbursements (including Harmonized Sales Tax) of KPMG CF and Blakes incurred by OAI prior to the making of the Appointment Order total \$1,041,288.91 (the **“KPMG CF Fees”**) and \$446,463.92 (the **“Blakes Fees”**), respectively. A copy of the KPMG CF invoice summary is attached as **Appendix “G”** herein. A copy of the Blakes invoice summary is attached as **Appendix “H”** herein.

31. Pursuant to the Appointment Order and the Advisory Charge, the Sales Officer is proposing and seeking an authorization and approval for distributions from the Sales Proceeds on account of the KPMG CF Fees (the **“KPMG CF Distribution”**) and Blakes Fees (the **“Blakes Distribution”**), following the completion of the TD Bank Distribution and ECN Distribution.

32. The Sales Officer is reasonably satisfied that there will remain sufficient Sale Proceeds following the completion to the TD Bank Distribution, ECN Distribution, KPMG CF Distribution and Blakes Distribution (collectively, the “**Distributions**”) to support the Sales Officer’s Charge.
33. The Sales Officer is currently assessing the most effective and reasonable method with respect to dealing with the residual Sale Proceeds following the Distributions (the “**Residual Proceeds**”). As noted above, the MoH has indicated that it will be initiating the OAI Funding Reconciliation and there may be priority claims (i.e. Canada Revenue Agency) or other claims to the Residual Proceeds including those of OAI and its shareholders, and the stakeholders and interested parties in the Court ordered Sales Process.

VII. SALES OFFICER’S OTHER ACTIVITIES

34. Pursuant to the Appointment Order, in addition to the activities undertaken by the Sales Officer in respect of the Transaction described herein, the Sales Officer has continued to review and monitor the cash receipts and disbursements of OAI.
35. On a weekly basis, OAI continues to provide the Sales Officer with a list of proposed disbursements and related supporting documentation for the Sales Officer’s review prior to those disbursements being issued. OAI also continues to provide the Sales Officer with the details of the actual receipts and disbursements for the prior week.
36. All disbursements made by OAI since the date of the Second Report have been made in compliance with the terms of the Appointment Order including paragraph 22 of the Appointment Order which prohibits OAI from making any payments on account of shareholder loans or advance loans to any of the shareholders, any corporation or entity associated with any of the shareholders, or any related third parties until such time as the indebtedness of OAI to TD Bank and to ECN have been paid in full. The only payments made to shareholders since the date of the Second Report relate to fees payable to the shareholders for professional services rendered in accordance with the usual and customary rates and terms which is specifically provided for in paragraph 22 of the Appointment Order.

37. Pursuant to paragraph 3(i) of the Appointment Order, the Sales Officer has been providing weekly written updates to TD Bank and ECN in respect of the status of the Sale Process and the Transaction and the Sales Officer's monitoring of the receipts and disbursements of OAI. The Sales Officer has also provided periodic updates to OAI's counsel on the status of the Transaction and the related pre-closing matters.

VIII. APPROVAL OF PROFESSIONAL FEES

38. The Sales Officer and its counsel have maintained detailed records of their professional time and costs since February 1, 2019 up to and including May 31, 2019 (the "**Fee Period**"), as detailed in the Fee Affidavit of Anamika Gadia of KPMG sworn June 11, 2019 and the Fee Affidavit of Robert Kennedy of Dentons sworn June 11, 2019 (collectively, the "**Fee Affidavits**"). Copies of the Fee Affidavits are attached as **Appendix "I"**, and **Appendix "J"**, respectively.
39. Pursuant to paragraph 26 of the Appointment Order, the Sales Officer and its counsel, shall be paid their reasonable fees and disbursements and shall pass their accounts before this Court.
40. The fees and disbursements (including Harmonized Sales Tax) of the Sales Officer during the Fee Period total \$143,424.06. The details of the time spent and the services provided by the Sales Officer are more particularly described in the Fee Affidavit of Anamika Gadia.
41. The fees and disbursements (including Harmonized Sales Tax) of Dentons during the Fee Period total \$181,660.57. The details of the time spent and the services provided by Dentons are more particularly described in the Fee Affidavit of Robert Kennedy.
42. The Sales Officer has reviewed the accounts of its counsel and believes that the accounts of the Sales Officer and Dentons are reasonable in the circumstances and respectfully requests that the Court approve the Sales Officer's fees and disbursements and those of its counsel.

IX. CONCLUSION

43. The Sales Officer submits this Third Report to the Court in support of the Sales Officer's Motion for the relief as set out in the Motion Record and recommends that the Court grant the following relief:

- (a) An Order substantially in the form contained at Tab 3 of the Motion Record: (a) authorizing and directing the Sales Officer to complete the TD Bank Distribution and ECN Distribution, (b) authorizing and directing the Sales Officer to complete the KPMG CF Distribution and Blakes Distribution pursuant to the Advisory Charge, and (c) approving the activities of the Sales Officer as set out in the Third Report and approving the fees of the Sales Officer and Dentons for the period February 1, 2019 to May 31, 2019;

All of which is respectfully submitted at Toronto, Ontario this 12th day of June, 2019.

**KPMG Inc., in its capacity as Court
Appointed Sales Officer of Oxford
Advanced Imaging Inc. and not in its
personal capacity**



Per: _____

Anamika Gadia
Senior Vice President

THE TORONTO-DOMINION BANK

- and -

OXFORD ADVANCED IMAGING INC.

Applicant

Respondent

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

PROCEEDING COMMENCED AT TORONTO

**THIRD REPORT OF KPMG INC. in its capacity as
SALES OFFICER OF OXFORD ADVANCED
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