

Court File No. 09-8260-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE)
MR. JUSTICE WILTON-SIEGEL)
FRIDAY, THE 29th DAY
OF JANUARY, 2010

BETWEEN:

ALEXANDER JOSIPOVICZ

Applicant

- and -

HIPPO PROPERTIES INC. and
KENNETH WHYTE

Respondents

APPLICATION UNDER section 253 of the *Business Corporations Act*, R.S.O. 1990,
c.B. 16, as amended

AND BETWEEN:

KENNETH WHYTE

Applicant on Cross-Application

- and -

HIPPO PROPERTIES INC. and
ALEXANDER JOSIPOVICZ

Respondents on Cross-Application

APPLICATION UNDER section 207 of the *Business Corporations Act*, c. B.16, as
amended

ORDER

THIS APPLICATION, made by the applicant, Alexander Josipovicz, for an Order pursuant to sections 140 and 253 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the "OBCA") for access to the records of Hippo Properties Inc. (the "Company") (the "Records Application") and THIS CROSS-APPLICATION, made by the cross-applicant, Kenneth Whyte, for an Order pursuant to section 207 of the OBCA for the winding up of the Company and pursuant to subsection 210(1) of the OBCA appointing Schonfeld Inc., Receivers + Trustees, as Liquidator (the "Liquidator") of the Company (the "Winding-up Application"), were heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Alexander Josipovicz sworn July 2, 2009, the Affidavit of Kenneth Whyte sworn September 3, 2009, the Affidavit of Christine Raffan sworn September 3, 2009, the Affidavit of Alexander Josipovicz sworn September 25, 2009, the Affidavit of Kenneth Whyte sworn September 30, 2009, the Affidavit of Christine Raffan sworn September 28, 2009, the Affidavit of Alexander Josipovicz sworn October 4, 2009, the Affidavit of David Corazza sworn October 4, 2009, the Affidavit of Kenneth Whyte sworn November 9, 2009, the Affidavit of Alexander Josipovicz sworn November 13, 2009, the Affidavit of Kenneth Whyte sworn November 18, 2009, the transcript of the cross-examination of Kenneth Whyte held November 25, 2009, the transcript of the cross-examination of Christine Raffan held November 25, 2009, the transcript of the cross-examination of Alexander Josipovicz held January 15, 2010, the transcript of the Statement for the Record dated January 18, 2010, and all Exhibits thereto, and on hearing the submissions of counsel for the cross-applicant, and upon being advised by counsel to the applicant that the applicant does not oppose the granting of this Order, and on reading the Consent of the Liquidator,

DISPOSITION OF THE RECORDS APPLICATION

1. THIS COURT ORDERS that the Records Application is hereby discontinued.

WINDING-UP AND APPOINTMENT

2. THIS COURT ORDERS that the Company be wound up.

3. THIS COURT ORDERS that the Liquidator is hereby appointed liquidator, without security, of all of the assets, property and undertakings of the Company (the "Property") effective upon the granting of this Order.

LIQUIDATOR'S POWERS

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

- (a) to take possession and control of the Property, including all bank accounts of the Company, any and all capital assets of the Company and any and all proceeds, receipts and disbursements arising out of or from the Property for the purpose of winding up the Company's business and distributing its property;
- (b) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons, including former employees, accountants and advisors to the Company, if any, from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (c) to receive and collect all monies and accounts now owed or hereafter owing to the Company, including such amounts owing or determined to be owing from its shareholders or entities related to them, and to exercise all remedies of the Company in collecting such monies; including, without limitation, to enforce any security held by the Company;
- (d) to settle, extend or compromise any indebtedness owing to the Company;
- (e) 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 Company, the Property or the Liquidator, and

to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (f) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;
- (g) 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 \$25,000; provided that the aggregate consideration for all such transactions does not exceed \$100,000; 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*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

- (h) 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;
- (i) to exercise any shareholder, partnership, joint venture or other rights which the Company may have;
- (j) to do all acts and execute, in the name and on behalf of the Company, all documents, and for that purpose use the seal of the corporation, if any;

- (k) to do and execute all such other things as are necessary for winding up the business and affairs of the Company and distributing its property;
- (l) to take any steps reasonably incidental to the exercise of these powers, and
- (m) to provide reports to, meet with and discuss with such affected Persons (as defined below) as the Liquidator deems appropriate on all matters relating to the Property and the winding-up, and to share information, subject to such terms as to confidentiality as the Liquidator deems advisable.

and in each case where the Liquidator 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 Company, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE LIQUIDATOR

5. THIS COURT ORDERS that (i) the Company, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, including but not limited to Kenneth Whyte, Alexander Josipovicz, Christine Raffan, David Corazza and Karen Carradonna, having notice of this Order and (iii) 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 Liquidator of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Liquidator, and shall deliver all such Property to the Liquidator upon the Liquidator's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, specifically including, but not limited to all books and records of the Company to which a director of the Company would be entitled pursuant to section 144 of the OBCA, and any other papers, records and information of any kind related to the business or affairs of the Company, 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 possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain

and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that the Records shall, upon reasonable notice to the Liquidator and during normal business hours of the Liquidator, be open to examination by each of Kenneth Whyte and Alexander Josipovicz and their respective legal counsel, and that a copy of these Records be provided by the Liquidator to them upon request, the reasonable costs associated with such access and copies to be determined by the Liquidator, and invoiced to and paid by the requesting person to the Liquidator forthwith.

8. 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 Liquidator for the purpose of allowing the Liquidator 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 Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidator. Further, for the purposes of this paragraph, all Persons shall provide the Liquidator with all such assistance in gaining immediate access to the information in the Records as the Liquidator may in its discretion require including providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator 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 LIQUIDATOR

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court.

LIMITATION ON THE LIQUIDATOR'S LIABILITY

10. THIS COURT ORDERS that the Liquidator 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 as so found by a court of competent jurisdiction.

LIQUIDATOR'S ACCOUNTS

11. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Liquidator, including the fees and disbursements of the Liquidator and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Liquidator and its counsel, shall be allowed to it in passing its accounts and 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 (the "Liquidator's Charge").

12. THIS COURT ORDERS the Liquidator and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

13. THIS COURT ORDERS that prior to the passing of its accounts, the Liquidator 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 normal rates and charges of the Liquidator or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE WINDING-UP

14. THIS COURT ORDERS that the Liquidator be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Liquidator by this Order, including interim expenditures. The whole of the Property shall be and

is hereby charged by way of a fixed and specific charge (the "Liquidator's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Liquidator's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, if applicable.

15. THIS COURT ORDERS, for greater certainty, that in the event there are insufficient monies realized from the assets, property and undertaking of the Company to fund the exercise of the powers and duties conferred upon the Liquidator by this Order, either or both of Kenneth Whyte or Alexander Josipovicz may, at their sole discretion, loan monies to the Liquidator and receive a Liquidator's Certificate in respect thereof pursuant to the provisions of this Order.

16. THIS COURT ORDERS that neither the Liquidator's Borrowings Charge nor any other security granted by the Liquidator in connection with its borrowings under this Order shall be enforced without leave of this Court.

17. THIS COURT ORDERS that the Liquidator is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Liquidator's Certificates") for any amount borrowed by it pursuant to this Order.

18. THIS COURT ORDERS that the monies from time to time borrowed by the Liquidator pursuant to this Order or any further order of this Court and any and all Liquidator's Certificates evidencing same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Liquidator's Certificates.

19. THIS COURT ORDERS that neither Kenneth Whyte nor Alexander Josipovicz are personally liable to the Liquidator for any of the Liquidator's fees and disbursements, except those obligations that may arise from any agreement entered into by either of them with the Liquidator related to any loans by either of them pursuant to paragraph 15.

GENERAL

20. THIS COURT ORDERS that nothing in this Order derogates from any rights that the Liquidator may have pursuant to the applicable provisions of the OBCA.

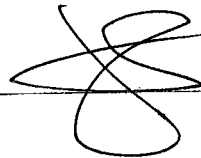
21. THIS COURT ORDERS that the Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

22. THIS COURT ORDERS that the Liquidator shall report to this Court upon a proposed list of contributors, if any, pursuant to section 214 of the OBCA and upon any proposed distribution of the proceeds of realization of the Property to the shareholders of the Company.

23. THIS COURT ORDERS that nothing in this Order shall prevent the Liquidator from acting as a trustee in bankruptcy of the Company or applying for a bankruptcy order in respect of the Company or assigning it into bankruptcy.

COSTS OF THE RECORDS APPLICATION AND THE WINDING-UP APPLICATION

24. THIS COURT ORDERS that the costs of the Records Application and the Winding-up Application be reserved to a hearing on a date to be set. In the circumstances of the Records Application and the Winding-up Application, there is no presumption of entitlement to costs to anyone by the fact of the discontinuance of the Records Application.



Joanne Nicoara
Registrar, Superior Court of Justice

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

JAN 29 2010

PER / PAR: JSN

SCHEDULE "B"

LIQUIDATOR CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [LIQUIDATOR'S NAME], the liquidator (the "Liquidator") of the assets, undertakings and properties of Hippo Properties Inc. (the "Company") acquired for, or used in relation to a business carried on by the Company, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 2010 (the "Order") made in an action having Court file number 09-CL-8260-00CL, has received as such Liquidator from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$● which the Liquidator is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Liquidator pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, if applicable, and the right of the Liquidator to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office or residence of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the

Liquidator to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Liquidator to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Liquidator does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2010.

[LIQUIDATOR'S NAME], solely in its capacity
as Liquidator of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

ALEXANDER JOSIPOVICZ
Applicant

KENNETH WHYTE and
HIPPO PROPERTIES INC.
Respondents

Court File No: 09-8260-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

ORDER

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