

COURT FILE NUMBER **1601-02201**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) **BANK OF MONTREAL**

DEFENDANT(S) **BUMPER DEVELOPMENT CORPORATION LTD., and
BUMPER DEVELOPMENT CORPORATION**

DOCUMENT **APPLICATION RE: SALE APPROVAL
AND VESTING ORDER**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT **Fasken Martineau DuMoulin LLP**
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File No.: 303718.00002



NOTICE TO RESPONDENT(S):

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: January 12, 2017

Time: 11:30 a.m.

Where: Calgary Court Centre, 601 - 5 Street S.W., Calgary, Alberta, T2P 5P7

Before Whom: Justice D. B. Nixon

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. A Sale Approval and Vesting Order, substantially in the form attached as **Schedule “A”**, ordering, *inter alia*:
 - (a) the approval of the Receiver’s activities as set forth in the fifth report of the Receiver dated January 6, 2017 (the “**Fifth Report**”);
 - (b) the approval of the BioTech Share SPA between the Receiver and the Purchaser (as that term is defined in the BiotTech Share SPA) in respect of the shares described therein (the “**BioTech Shares**”);
 - (c) approving the distributions to Bank of Montreal (“**BMO**”) described in the Fifth Report; and
 - (d) the approval of the Receiver’s accounts for fees and costs, including the accounts of the Receiver’s legal counsel, incurred in these proceedings to December 31, 2017.
2. A Sealing Order in the form attached hereto as **Schedule “B”**, ordering, *inter alia*, the sealing of Confidential Appendices “C”, “D” and “E” to the Fifth Report.

Grounds for making this application:

The grounds for making this application are set out more fully in the Fifth Report, but can be summarized as follows:

(A) Background

3. Any capitalized term not defined in the Application shall take the meaning ascribed to it in the Fifth Report.
4. Effective February 16, 2016, pursuant to an order of the Honourable Justice B. Nixon granted in these proceedings (the “**Receivership Order**”), Alvarez & Marsal Canada Inc. was appointed receiver (the “**Receiver**”), without security, of all of the current and future

assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the “**Property**”) of Bumper Development Corporation Ltd. and Bumper Development Corporation (collectively, “**Bumper**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended, in the within action (the “**Receivership Proceedings**”).

5. The Receivership Order empowers and authorizes, but does not obligate, the Receiver to, among other things, manage, operate and carry on the business of Bumper and to take possession and control of the Property of Bumper and any and all proceeds, receipts and disbursements arising out of or from the Property, and to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business.

(B) Receiver’s Activities

6. The Receiver’s actions and activities up to the date of this Application, as described in the Fifth Report are lawful, proper, and consistent with its powers under the Receivership Order.

(C) BioTech Share SPA

7. Given the commercial sensitivity of the BioTech Entities’ business, the confidentiality requirements of the BioTech Entities and the restrictions on the transfer of the BioTech Entities’ shares, the Receiver believes that conducting a broader-based marketing process to the public would not be an effective way to sell the BioTech Shares.
8. The Receiver, with the support of BMO and the BioTech Entities, determined that the most practical and cost-effective way of achieving maximum realizations for the creditors and stakeholders of the Bumper estate would be to conduct the BioTech Marketing Process.
9. The Receiver believes that the BioTech Shares have been adequately exposed to those individuals that would likely purchase and/or place an offer for the BioTech Shares and all potential bidders in the BioTech Marketing Process were treated equally and fairly.

10. The Receiver believes that the transaction contemplated in the BioTech Share SPA is the best and highest offer available in the circumstances, and will garner the greatest recovery to the creditors in the Receivership Proceedings.

(D) Approval of Sale and Vesting of Assets

11. The Receiver believes it is appropriate for the Court to approve the BioTech Share SPA and grant an order vesting the BioTech Shares in the Purchaser free and clear of all claims, liens and encumbrances.

(E) Distribution

12. The Receiver is advised by its counsel that BMO's security as against Bumper is valid and enforceable and ranks in priority to all other unsecured creditors and the Encana secured claim.
13. If the BioTech Share SPA is approved by this Court and the transaction closes, upon filing the Receiver's Certificate, the Receiver recommends to distribute to BMO as a partial repayment of the indebtedness owing by Bumper to BMO, the net sale proceeds derived from the closing of the BioTech Share SPA, less an amount, to be determined at the Receiver's sole discretion, to be retained to cover future costs of the administration of the estate of Bumper.
14. Further, the Receiver recommends distributing to BMO a portion of the net proceeds realized from the sale of the A Co. Shares which, together with the prior distributions and the proposed distribution in paragraph 13 above, will likely repay the entire indebtedness owing by Bumper to BMO.

(F) Accounts

15. The Receiver is respectfully of the view that its and its counsel's fees and costs are fair and reasonable under the circumstances and that they have been validly incurred in connection with the discharge of the Receiver's obligations, which have been dutifully performed.

(G) Sealing Order

16. The Receiver is concerned that the disclosure of the terms and conditions of the BioTech Share SPA and the name of the Purchaser, prior and subsequent to the closing of the BioTech Share SPA, would materially jeopardize the sale of the BioTech Shares.
17. Additionally, the Purchaser specifically required the BioTech Share SPA to include a provision that the Receiver and the Purchaser keep confidential any or all information pertaining to the BioTech Share SPA, including the Purchaser's name, unless required to be disclosed to any governmental authority or regulatory authority or the public if required by law and/or in connection with obtaining an approval and vesting order from this Honourable Court.
18. As such, the Receiver is respectfully of the view that it is appropriate that this Honourable Court grant the Receiver's request for a sealing of the following appendices to this Fifth Report:
 - (a) Bumper Investment Schedule (Confidential Appendix "C");
 - (b) Analysis of the BioTech Share SPA (Confidential Appendix "D"); and
 - (c) BioTech Share SPA (Confidential Appendix "E").

Material or evidence to be relied on:

19. The Fifth Report of the Receiver dated January 6, 2017;
20. Affidavit of Service; and
21. The other pleadings and materials filed in this Action, including the Receiver's prior reports to the Court, and such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

22. Rules 1.3, 1.4, 6.3, and 13.5(2) of the *Rules of Court*; and
23. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

24. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
25. *Judicature Act*, R.S.A. c. J-2; and
26. Such further and other Acts and Regulations as counsel for the Receiver may advise or this Honourable Court may permit.

Any irregularity complained of or objection relied on:

27. Not applicable.

How the application is proposed to be heard or considered:

28. Before the presiding Justice D. B. Nixon in Commercial Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

SALE APPROVAL AND VESTING ORDER

COURT FILE NUMBER **1601-02201**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

 IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) **BANK OF MONTREAL**

DEFENDANT(S) **BUMPER DEVELOPMENT CORPORATION LTD.,
and BUMPER DEVELOPMENT CORPORATION**

DOCUMENT **APPROVAL and VESTING ORDER**

ADDRESS FOR SERVICE **Fasken Martineau DuMoulin LLP**
AND CONTACT Barristers & Solicitors
 3400 First Canadian Centre
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FILING THIS DOCUMENT Calgary, AB T2P 3N9

Attention: Travis Lysak
 Telephone: (403) 261-5350
 Facsimile: (403) 261-5351
 Email: tlysak@fasken.com
 File No.: 303718.00002

APPROVAL AND VESTING ORDER

DATE ON WHICH ORDER WAS PRONOUNCED: January 12, 2017

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF THE JUDGE WHO MADE THIS ORDER: The Honourable Justice D. B. Nixon

UPON the application of Alvarez & Marsal Canada Inc. (the "**Receiver**"), in its capacity as the court-appointed receiver of all of the assets, properties and undertakings of Bumper Development Corporation Ltd. and Bumper Development Corporation (collectively the "**Debtor**") for an Order approving the purchase and sale transaction contemplated by the share purchase agreement dated as of December 22, 2016 (the "**SPA**") and entered into between the Debtor, by and through the Receiver, and the purchaser named in the SPA (the "**Purchaser**") (as that term is defined in the SPA); **AND UPON** having read the Application, the fifth report of the Receiver dated January 6, 2017 (the "**Fifth Report**"), and other materials filed in the within proceedings; **AND UPON** hearing the submissions of counsel for the Receiver and any other

interested parties appearing at the hearing of the within application, **IT IS HEREBY ORDERED THAT:**

1. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Fifth Report.
2. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

RECEIVER'S ACTIVITIES

3. The actions, conduct and activities of the Receiver as reported in the Fifth Report, are hereby authorized and approved.

APPROVAL OF THE SPA

4. The SPA, attached as Confidential Appendix E to the Fifth Report, which contemplates the sale by the Debtor, and the purchase by the Purchaser, of the BioTech Shares (the "**Transaction**"), is hereby approved and the SPA is determined to be commercially reasonable and in the best interests of the estate of the Debtor and the Purchase Price (as that term is defined in the SPA) contained therein represents the best possible and realizable value for the BioTech Shares in the present circumstances.

5. The SPA and the execution and acceptance thereof by the Receiver, including any amendments that may be agreed upon by the parties, is hereby authorized and approved and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as the Receiver considers to be necessary or desirable for the completion of the SPA, for the assignment and conveyance of the BioTech Shares to the Purchaser and to otherwise complete the Transaction.

6. The Receiver is hereby further authorized and directed, subject to the terms and conditions of this Order and the SPA, to take such additional steps as the Receiver considers to be necessary or desirable for the completion of the Transaction, and for the assignment and conveyance of the Debtor's right, title and interest in the BioTech Shares to the Purchaser substantially as contemplated by the terms and conditions of this Order and the SPA, and for

greater certainty, the sale of the BioTech Shares is also approved pursuant to the Receivership Order granted on February 16, 2016 (the “**Receivership Order**”).

VESTING PROVISIONS

7. Upon the delivery by the Receiver to the Purchaser (or its nominee) of a Receiver’s Certificate substantially in the form attached hereto as **Schedule “A”** confirming the closing of the Transaction contemplated by the SPA, all legal and beneficial ownership of and title to the BioTech Shares described in the SPA shall vest absolutely in the name of the Purchaser (or its nominee), 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 whether contractual, statutory or otherwise (including without limitation any statutory or builders’ liens), executions, levies, charges, or other financial or monetary claims, taxes and arrears of taxes, executions, levies and other rights, limitations, restrictions, interests and encumbrances, whatsoever, howsoever and wheresoever created or arising whether absolute or contingent, fixed or floating, 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:

- a. any encumbrances or charges created by the Receivership Order or any further orders granted in this action; and
- b. all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry regime.

(all of which are collectively referred to as the “**Encumbrances**”).

For greater certainty, this Court orders that all of the Encumbrances affecting or relating to the BioTech Shares are hereby expunged and discharged as against the BioTech Shares.

CLOSING OF THE SALE TRANSACTION

8. The closing of the Transaction shall be effected in accordance with the terms of the SPA and such amendments to the SPA as may be agreed to in writing between the Purchaser and the Receiver.

9. For the purposes of determining the nature and priority of the Claims, the net proceeds arising out of the SPA shall stand in the place and stead of the BioTech Shares and all Claims shall attach solely to such net proceeds with the same validity, priority and in the same amounts and subject to the same defences that were or may have been available immediately prior to the closing of the Transaction as if the BioTech Shares had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the closing of the Transaction.

10. Upon the closing of the Transaction, the Debtor and all persons who claim in respect of the BioTech Shares, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the BioTech Shares and, to the extent that any such person other than the Receiver remains in possession or control of any of the BioTech Shares, they shall forthwith deliver possession of same to the Purchaser or its nominee.

11. If the Transaction is for any reason not completed, the Receiver and the Purchaser are hereby given leave to re-apply to this Honourable Court for such variations and modifications to the within Order as may be necessary and prudent in the circumstances, including without limitation reinstatement of affected Claims.

12. Immediately after the closing of the Transaction, the Purchaser shall have no claim whatsoever against the Receiver or the Debtor.

13. The Purchaser (or its nominee, if any) shall be entitled to enter into and upon, hold and enjoy the BioTech Shares for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.

14. The Purchaser (or its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor or the Receiver.

RECEIPTS AND DISBURSEMENT AND APPROVAL OF PROFESSIONAL FEES

15. The Receiver's accounts for fees and costs, as set out in Appendix "G" to the Fifth Report, are hereby approved.

16. The accounts of the Receiver's legal counsel Fasken Martineau DuMoulin LLP, as set out in Appendix "H" to the Fifth Report, are hereby approved.

17. The Receiver's statement of receipts and disbursements, as contained in the Fifth Report, is hereby approved.

DISTRIBUTION

18. The Receiver is hereby authorized and directed to make the distributions of the following funds to BMO:

- a. the net sale proceeds derived from the closing of the SPA, less an amount, to be determined at the Receiver's sole discretion, to be retained to cover future costs of the administration of the estate of Bumper; and
- b. that portion of the net sale proceeds derived from the sale of the A Co. Shares which is required to repay all outstanding indebtedness owed by the debtor to BMO.

GENERAL

19. The Receiver is to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser (or its nominee).

20. 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 BioTech Shares in the Purchaser (or its nominee) 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 settlement, 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.

21. No authorization or approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the BioTech Shares is required for the due execution, delivery and performance by the Receiver of the SPA, other than authorizations, approvals or exemptions from requirements therefor previously obtained and currently in force, if any.

22. 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 as 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.

SERVICE OF THIS ORDER

23. This Order shall be sufficiently served by serving the same on the service list, in the same manner as the Application was served and by posting a copy of the same on the Receiver's website at: <http://www.alvarezandmarsal.com/bumper>.

24. Service of this Order on any other interested person in any other manner than set out above is hereby dispensed with.

Justice of the Court of Queen's Bench of Alberta

Schedule "A"

COURT FILE NUMBER	1601-02201
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	CALGARY
PLAINTIFF(S)	BANK OF MONTREAL
DEFENDANT(S)	BUMPER DEVELOPMENT CORPORATION LTD., and BUMPER DEVELOPMENT CORPORATION
DOCUMENT	RECEIVER'S CERTIFICATE
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Fasken Martineau DuMoulin LLP Barristers & Solicitors 3400 First Canadian Centre 350 - 7 Avenue S.W. Calgary, AB T2P 3N9 Attention: Travis Lysak Telephone: (403) 261-5350 Facsimile: (403) 261-5351 Email: tlysak@fasken.com File No.: 303718.00002

RECITALS

A. Pursuant to an Order of the Honourable Justice D. B. Nixon of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated February 16, 2016, Alvarez & Marsal Canada Inc. was appointed receiver and manager (the "**Receiver**") of the undertaking, property and assets of Bumper Development Corporation Ltd. and Bumper Development Corporation (collectively the "**Debtor**").

B. Pursuant to an Order of the Court dated January 12, 2017, the Court approved the share purchase agreement made as of December 22, 2016 (the "**SPA**") between the Receiver and the Purchaser and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the BioTech Shares (as that term is defined in the Fifth Report of the Receiver filed in these proceedings), which vesting is to be effective with respect to the BioTech Shares 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 BioTech Shares; (ii) that the conditions to Closing as set out in the SPA have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Closing 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 SPA.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the BioTech Shares payable on the Closing Date pursuant to the SPA;
2. The conditions to Closing as set out in the SPA have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and
3. The Closing has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on _____, 2017.

Alvarez & Marsal Canada Inc., in its capacity as Receiver of the undertaking, property and assets of Bumper Development Corporation Ltd. and Bumper Development Corporation, and not in its personal capacity.

Per: _____

Name:

Title:

SCHEDULE "B"
SEALING ORDER

COURT FILE NUMBER	1601-02201
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	CALGARY
PLAINTIFF(S)	BANK OF MONTREAL
DEFENDANT(S)	BUMPER DEVELOPMENT CORPORATION LTD., and BUMPER DEVELOPMENT CORPORATION
DOCUMENT	SEALING ORDER
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Fasken Martineau DuMoulin LLP Barristers & Solicitors 3400 First Canadian Centre 350 - 7 Avenue S.W. Calgary, AB T2P 3N9 Attention: Travis Lysak Telephone: (403) 261-5350 Facsimile: (403) 261-5351 Email: tlysak@fasken.com File No.: 303718.00002

SEALING ORDER

DATE ON WHICH ORDER WAS PRONOUNCED: January 12, 2017

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF THE JUDGE WHO MADE THIS ORDER: The Honourable Justice D. B. Nixon

UPON the application of Alvarez & Marsal Canada Inc. (the "**Receiver**"), in its capacity as the court-appointed receiver of all of the assets, properties and undertakings Bumper Development Corporation Ltd. and Bumper Development Corporation. (collectively the "**Debtor**") for an Order sealing Confidential Appendices "C", "D" and "E" to the fifth report of the Receiver dated January 6, 2017 (the "**Fifth Report**"), AND UPON having read the application, the Fifth Report, the other materials filed in the within proceedings, and the Affidavit of Service; AND UPON hearing the submissions of counsel for the Receiver and any other interested parties appearing at the hearing of the within application;

IT IS HEREBY ORDERED THAT:

1. Unless otherwise defined herein, all capitalized terms shall have the meaning given to them in the Fifth Report.
2. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

SEALING

3. Confidential Appendices “C”, “D” and “E” to the Fifth Report shall immediately be sealed by the Clerk of the Court, kept confidential and not form part of the public record, and not be available for public inspection unless and until otherwise ordered by this Court, upon seven days’ notice to all interested parties.
4. The Clerk of the Court is hereby directed to place the sealed Confidential Appendices “C”, “D” and “E” separate and apart from all other contents of the Court file in a sealed envelope attached to a notice that sets out the title to these proceedings, the aforementioned description of the documents contained therein, and a statement that the contents of the envelope are sealed pursuant to this Order.

SERVICE OF THIS ORDER

5. This Order shall be sufficiently served by serving the same on the service list, in the same manner as the Application was served and by posting a copy of the same on the Receiver’s website at: <http://www.alvarezandmarsal.com/bumper>.
6. Service of this Order on any other interested person in any other manner than set out above is hereby dispensed with.

Justice of the Court of Queen’s Bench of Alberta